TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 295

INTERNATIONAL LIFE INSURANCE COMPANY,
PLAINTIFF IN ERROR,

vs.

ADRIAN F. SHERMAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED MARCH 4, 1932.

(28,752)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 797.

INTERNATIONAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

ADRIAN F. SHERMAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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1 UNITED STATES OF AMERICA,
State of Missouri, ss:

Be it remembered That, heretofore, to-wit, on the 12th day of September, 1918, there was filed in the office of the clerk of the Supreme Court of the State of Missouri, in a cause between Adrian F. Sherman, Respondent, and International Life Insurance Company of St. Louis, Missouri, Appellant, No. 21,220, a certified transcript of the judgment of the Circuit Court of Jackson County, Missouri, at Kansas City, and of the order of said circuit court granting an appeal from said judgment to the Supreme Court of the State of Missouri, which said transcript of said judgment and of said order granting an appeal therefrom is in the words and figures following, to-wit:

2 Be it remembered that on the 32nd day of the regular May Term, 1918, of the Circuit Court of Jackson County, Missouri, at Kansas City, the same being the 13th day of July, 1918, the following proceedings were had and made of record before Hon. Thomas J. Seehorn, Judge of Division No. 3 in the cause entitled:

No. 75591.

ADRIAN F. SHERMAN, Plaintiff,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Defendant.

Heretofore on the 18th day of January 1918, this cause comes on regularly for trial before the court without a jury, a jury having been waived by agreement of the parties hereto; the plaintiff appears in his own person and by his attorneys, Thad B. Landon, Atwood, Hill and Popham and William Thomson, and the defendant appears by its attorneys, Cooper, Neal and Wright and Leslie J. Lyons. Thereupon the plaintiff dismisses the following counts of his petition herein, to-wit:

Second, third, fourth, fifth, sixth, seventh, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, seventy-ninth, eightieth, eighty-first, eighty-second, eighty-third, eighty-fourth, eighty-fifth, eighty-sixth, eighty-seventh, eighty-eighth, eighty-ninth, ninetieth, ninety-first, ninety-second, ninety-third, ninety-fourth, ninety-fifth, ninety-sixth, ninety-seventh, ninety-eighth, ninety-ninth, one hundred and second, one hundred and fourth and one hundred and fifth.

And thereupon the court heard the evidence and the arguments of counsel and said cause is submitted to the court and the court takes the same under advisement.

And now on the 13th day of July, 1918, and on a regular day of the regular May 1918, term of said court, the parties appear as above, and the court after having heard the evidence and the arguments of counsel and read and considered the briefs submitted by each of the said parties hereto, and being fully advised
3 in the premises finds the issues in favor of the plaintiff and against the defendant upon each of the following counts of said petition:

First, eighth, ninth, tenth, eleventh, twelfth, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty-eighth, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth, fifty-sixth, fifty-seventh, fifty-eighth, fifty-ninth, sixtieth, sixty-first, sixty-second, sixty-third, sixty-fourth, sixty-fifth, sixty-sixth, sixty-seventh, sixty-eighth, sixty-ninth, seventieth, seventh-first, seventy-second, seventy-third, seventy-fourth, seventy-fifth, seventy-sixth, seventy-seventh, seventh-eighth, one hundred, one hundred and first, one hundred and third, one hundredth and sixth, one hundred and seventh, one hundred and eighth, one hundred and ninth, one hundred and tenth, one hundred and eleventh, one hundred and twelfth.

The court finds the plaintiff is entitled to recover from the defendant, upon the first count of said petitioner, the sum of $138.00, together with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $184.62 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the eighth count in said petition the sum of $690.00, with interest from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the ninth count in said petition the sum of $1,380.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit the sum of $1,815.20 with interest from the date of this judgment at the rate of
4 six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the tenth count in said petition the sum of $414.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $544.41, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the eleventh count in said petition the sum of $138.00 with interest thereon from the 22nd day of February 1913, at the

rate of six (6) per cent per annum, to wit, the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the twelfth count in said petition the sum of $138.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the twenty-fourth count in said petition the sum of $276.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the twenty-fifth count in said petition the sum of $276.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the twenty-sixth count in said petition the sum of $690.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the twenty-seventh count in said petition the sum of $690.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the twenty-eighth count in said petition the sum of $690.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the twenty-ninth count in said petition the sum of $690.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit: the sum of $807.35, with interest from the date of this judgment at the rate of six per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the thirtieth count in said petition the sum of $138.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the thirty-first count in said petition the sum of $276.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $362.94 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

6 The court finds that the plaintiff is entitled to recover from the defendant upon the thirty-second count in said petition the sum of $552.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $725.88, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the thirty-third count in said petition the sum of $138.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the thirty-fourth count in said petition the sum of $414.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit the sum of $544.41 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the thirty-fifth count in said petition the sum of $414.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit the sum of $544.41 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court find- that plaintiff is entitled to recover from the defendant upon the thirty-sixth count in said petition the sum of $1,104.00, with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to wit, the sum of $1,451.76, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that plaintiff is entitled to recover from the defendant upon the thirty-seventh count in said petition the

7 sum of $966.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to wit, the sum of $1,270.29 with interest from the date of this judgment, at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the thirty-eighth count in said petition the sum of $966.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $1,270.29, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the thirty-ninth count in said petition the sum of $1,104.00 with interest thereon from the 22nd day of February 1913,

at the rate of six (6) per cent per annum, to-wit, the sum of $1,451.76, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fortieth count in said petition the sum of $690.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the forty-first count in said petition the sum of $1,380.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $1,815.20, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the forty-second count in said petition the sum of $414.00 with interest thereon from the 22nd day of February 1913,
at the rate of six (6) per cent per annum, to-wit, the sum of
8 $544.41, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The Court finds that the plaintiff is entitled to recover from the defendant upon the forty-third count in said petition the sum of $414.00 with interest thereon from the 22nd day of February, 1913, at the rate of six (6) per cent per annum, to-wit the sum of $544.41, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the forty-fourth count in said petition the sum of $138.00 with interest thereon from the 22nd day of February, 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $184.62, with interest from the date of this judgment at the rate of six per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the forty-fifth count in said petition the sum of $690.00 with interest thereon from the 22nd day of February, 1913, at the rate of six (6) per cent per annum, to-wit the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the forty-sixth count in said petition the sum of $1,380.00 with interest thereon from the 22nd day of February, 1913, at the rate of six (6) per cent per annum to-wit the sum of $1,815.20 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

9 The court finds that the plaintiff is entitled to recover from the defendant upon the forty-seventh count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum to-wit the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the forty-eighth count in said petition the sum of $276.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the forty-ninth count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fiftieth count in said petition the sum of $690.00 with interest thereon from the 22nd day of February 1913, at the rate — six (6) per cent per annum, to-wit the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-first count in said petition the sum of $690.00, with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to-wit the sum of $807.35 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-second count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-third count in said petition the sum of $1,380.00, with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to-wit the sum of $1,815.20 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-fourth count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to-wit the sum of $362.94 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-fifth count in said petition the sum of $138.00, with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to-wit, the sum of $184.62 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-sixth count in said petition the sum of $138.00 with interest thereon from the 22nd day of February 1913

at the rate of six (6) per cent per annum, to-wit the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-seventh count in said petition the sum of $690.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

11 The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-eighth count in said petition the sum of $690.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the fifty-ninth count in said petition the sum of $690.00, with interest thereon from the 22nd day of February, 1913, at the rate of six (6) per cent per annum to-wit, the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixtieth count in said petition the sum of $138.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-first count in said petition the sum of $690.00, with interest, thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-second count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-third count in said petition the sum of $1,380.00, with interest thereon from the 22nd day of

12 February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $1,815.20, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-fourth count in said petition the sum of $276.00 with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-fifth count in said petition the sum of $138.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-sixth count in said petition the sum of $1,380.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $1,815.20, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-seventh count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $362.94, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-eighth count in said petition the sum of $138.00, with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to-wit the sum of $184.62 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

13 The court finds that the plaintiff is entitled to recover from the defendant upon the sixty-ninth count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $362.94, with interest thereon from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventieth count in said petition the sum of $276.00 with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to-wit, the sum of $362.94 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventy-first count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to-wit, the sum of $362.94 with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventy-second count in said petition the sum of $138.00, with interest thereon from the 22nd day of February 1913 at the rate of six (6) per cent per annum, to-wit the sum of $184.62 with interest thereon from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventy-third count in said petition the sum of $414.00 with interest thereon from the 22nd day of February

1913, at the rate of six (6) per cent per annum, to-wit, the sum of $544.41, with interest thereon from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventy-fourth count in said petition the sum of $690.00, with interest thereon from the 22nd day of
14 February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $807.35, with interest thereon from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventy-fifth count in said petition the sum of $138.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventy-sixth count in said petition the sum of $690.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventy-seventh count in said petition the sum of $138.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the seventy-eighth count in said petition the sum of $690.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $807.35, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the defendant upon the one hundredth count in said petition the sum of $1,104.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit, the sum of $1,451.76, with interest thereon from the date of this judgment at the rate of six (6) per cent per annum until paid.

15 The court finds that the plaintiff is entitled to recover from the defendant upon the one hundred and first count in said petition the sum of $138.00, with interest thereon from the 22nd day of February, 1913, at the rate of six (6) per cent per annum to-wit the sum of $184.62, with interest from the date of this judgment at the rate of six (6) per cent per annum until paid.

16 The court finds that the plaintiff is entitled to recover from the defendant upon the one hundred and third count in said petition the sum of $276.00, with interest thereon from the 22nd day of February 1913, at the rate of six (6) per cent per annum, to-wit,

the sum of $362.94, with interest from the date of this judgmen
at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the de
fendant upon the one hundred*th* and sixth count in said petitio
the sum of $1,380.00, with interest thereon from the 22nd day o
February 1913, at the rate of six (6) per cent per annum, to-wi
the sum of $1,815.20, with interest from the date of this judgmen
at the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the de
fendant upon the one hundred*th* and seventh count in said petitio
the sum of $138.00, with interest thereon from the 22nd day o
February 1913, at the rate of six (6) per cent per annum, to-wit, th
sum of $184.62, with interest from the date of this judgment at th
rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from th
defendant upon the one hundred*th* and eighth count in said petitio
the sum of $138.00, with interest thereon from the 22nd day o
February 1913, at the rate of six (6) per cent per annum, to-wi
the sum of $184.62, with interest from the date of this judgment
the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from th
defendant upon the one hundred and ninth count in said petitio
the sum of $138.00 with interest thereon from the 22nd day of Fe
ruary, 1913, at the rate of six (6) per cent per annum, to-wit, th
sum of $184.62, with interest from the date of this judgment at th
rate of six (6) per cent per annum until paid.

17 The court finds that the plaintiff is entitled to recover fro
the defendant upon the one hundred and tenth count in sa
petition the sum of $138.00, with interest thereon from the 22nd d
of February 1913, at the rate of six (6) per cent per annum, to-wi
the sum of $184.62, with interest from the date of this judgment
the rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the d
fendant upon the one hundred and eleventh count in said petitio
the sum of $1,380.00, with interest thereon from the 22nd day
February 1913, at the rate of six (6) per cent per annum, to-wit, th
sum of $1,815.20, with interest from the date of this judgment at th
rate of six (6) per cent per annum until paid.

The court finds that the plaintiff is entitled to recover from the d
fendant upon the one hundred and twelfth count in said petition th
sum of $138.00, with interest thereon from the 22nd day of Febr
uary 1913, at the rate of six (6) per cent per annum, to-wit, the su
of $184.62, with interest from the date of this judgment at the ra
of six (6) per cent per annum until paid.

Making an aggregate amount which plaintiff is entitled to r
cover of and from defendant upon the counts of said petition abo
names of $47,463.90, with interest from this date until paid at th
rate of six per cent per annum and the costs of this action.

It is therefore considered, ordered adjudged and decreed that th
plaintiff do have judgment and do have and recover of and from d
fendant the total sum of $47,463.90, together with interest there

from this date at the rate of six (6) per cent per annum and the costs of this suit.

And on the same day now defendant files motion for a new trial herein, which said motion is by the court heard and considered and is now by the court overruled, to which action of the court defendant duly excepts.

18 Now defendant files application and affidavit for appeal from the judgment of this court in this cause to the Supreme Court of the State of Missouri, which said application is by the court heard and considered and appeal is allowed to the Supreme Court of the State of Missouri and defendant is by the court given to on or before November 1st, 1918 to file a bill of exceptions herein.

Now the appeal bond herein is by the court fixed in the penal sum of Sixty Thousand ($60,000.00) Dollars and defendant is by the Court given to within ten days after the adjournment of this term of this court to file the same herein.

STATE OF MISSOURI,
County of Jackson, ss:

I, James B. Shoemaker, Clerk of the Circuit Court, within and for the County and State aforesaid, do hereby certify that the above and foregoing is a full, true and complete copy of the judgment and the order allowing an appeal in the cause entitled Adrian F. Sherman, Plaintiff against The International Life Insurance Company of St. Louis, Missouri, Defendant as the same appears of record in my office, in book No. 312 at page- 362, 370.

In witness whereof, I hereunto set my hand and affix the seal of said Circuit Court at office in Kansas City, this 7th day of Sept. A. D. 1918.

JAMES B. SHOEMAKER,
Clerk.
By TERESA G. McDONALD,
Deputy.

And thereafter, and on the 1st day of April, 1920, there was filed in said cause the Abstract of the Record for Appellant, which said abstract is in the words and figures following, to-wit:

19 In the Supreme Court of Missouri, April Term, 1920.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOULS, MISSOU
Appellant.

Appeal from Jackson County Circuit Court, at Kansas City.

Honorable Thomas J. Seehorn, Judge.

ABSTRACT OF THE RECORD FOR APPELLANT.

This cause was tried on the following pleadings (caption omitted duly filed in the Circuit Court of Jackson County, Missouri, Kansas City.

Second Amended Petition.

Now on this day comes the plaintiff and leave of the court havi been obtained files this its second amended petition, and for cause action against the defendant alleges and avers:

First Count.

1. Plaintiff states that he is a citizen and resident of Jacks County, Missouri, and that the defendant is a corporation duly ganized, incorporated and existing under and by virtue of the la of the State of Missouri, as a life insurance company, and authoriz by law and by its charter to make contracts of life insurance, insurance and the like under the supervision and authority of t State of Missouri.

20 2. Plaintiff further states that during the year 1907 a thereafter until about the month of November, 1912, t Great Western Life Insurance Company of Kansas City, Missou was a corporation duly organized, incorporated and existing und and by virtue of the laws of the State of Missouri, having its pri cipal office and place of business at Kansas City, Jackson Coun Missouri, and authorized to transact a life insurance business und and by virtue of the laws of the State of Missouri and its charter du granted to it.

3. Plaintiff further alleges that on or about the 5th day of Augu 1907, in consideration of the receipt by it of the sum of one hundr fifty ($150.00) dollars, the said Great Western Life Insurance Co pany issued to one John Kesl its Annuity Certificate Number 391, copy of which said Annuity Certificate is hereto attached mark

"Exhibit A" and the same is made a part of this petition and of this first count.

4. Plaintiff further alleges that under and by virtue of the provisions of said annuity certificate and in consideration of the receipt by it of the sum of one hundred fifty ($150.00) dollars, the said Great Western Life Insurance Company promised and agreed to pay to the said John Kesl annually during his life and thereafter to his heirs or personal representatives one share of the proceeds of twenty-five cents (25c.) per one thousand ($1,000.00) dollars of all insurance, except reinsurance, written by the said Great Western Life Insurance Co. in the United States for fifty (50) years from the date of the incorporation of said company on which premiums computed on the annual basis had been received in cash, and also for so long thereafter as premiums were received on such insurance, such annuity to be determined by the aggregate of said twenty-five cents (25c.) per one-thousand (1,000) shares of insurance, ascertained at the end of each calendar year, and such sum divided by five-hundred (500) and the quotient obtained should be the apportionment of each of said shares, and the total of one share thereof should be the annuity payable to the said John Kesl, payable within thirty days thereafter. And the said Great Western Life Insurance Company further guaranteed that the first annuity payable under such certificate should not be less than eight per cent (8%) upon the amount paid the company therefor.

5. Plaintiff further alleges that the first dividend of eight per cent due February 1st, 1908, was paid, but that after the year 1909 and each successive year thereafter, the said Great Western Life Insurance Company neglected and refused to carry out and perform the provisions and conditions of said certificate, and although the said John Kesl had done and performed all things required of him, the said Great Western Life Insurance Company failed, neglected and refused to pay to the said John Kesl any monies owing to him by reason of his purchase of such annuity certificate.

21 6. Plaintiff further alleges that on or about the — day of December, 1912, the said Great Western Life Insurance Company, by permission and with the approval of the Insurance Department of the State of Missouri, was absorbed by defendant herein; and the said defendant by such absorption became possessed of all the assets and property theretofore belonging to the Great Western Life Insurance Company, and obligated to pay the liabilities of said Great Western Life Insurance Company and to carry out and perform the contracts theretofore entered into by the said Great Western Life Insurance Company.

7. Plaintiff further alleges that after the absorption of said Great Western Life Insurance Company by defendant herein, the defendant failed, refused and neglected to carry out and perform any of the conditions and terms of said annuity certificate; and denied any liability under such annuity certificate; and denied any liability to the said John Kesl in any way whatever.

8. Plaintiff further alleges that for a good and valuable consideration the said John Kesl sold, transferred, assigned and set over unto plaintiff the said annuity certificate and all of his several rights and claims growing out of the matters and things aforesaid.

Wherefore, by reason of the premises, plaintiff prays judgment against the said defendant in the sum of one hundred thirty-eight ($138.00) dollars, together with interest thereon at the rate of six per cent (6%) per annum, and for costs of this action.

Second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this second count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to A. F. Derury on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto, and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said A. F. Derury for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

22 Third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this third count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Cleveland Sewall on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder as the annuity certificate described in the first count and attached hereto, and for the sake of brevity the certificate in this court is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Cleveland Sewall for a good and valuable consideration assigned transferred and delivered to the plaintiff herein all of his right, title

nd interest therein and all of his right, title and interest growing ut of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment gainst the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Fourth Count.

Plaintiff here refers to the first count herein and makes all of he allegations therein contained parts of this fourth count, so far s the same are applicable, and except as follows:

That the annuity certificate was issued to W. T. Grove on or about he — day of August, 1907, and in consideration of the receipt y the Great Western Life Insurance Company of the sum of fteen hundred ($1,500.00) dollars, which said annuity certificate s similar in every respect, containing the same provisions, agree- ents and covenants, except as to date, amount and name of holder, s the annuity certificate described in the first count and attached ereto; and for the sake of brevity the certificate in this count is ot copied, but reference is made to the copy attached to the first ount to the same effect as if here copied and attached in full; and hat the said W. T. Grove for a good and valuable consideration ssigned, transferred and delivered to the plaintiff herein all of his ight, title and interest therein and all of his right, title and interest rowing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment gainst the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Fifth Count.

Plaintiff here refers to the first count herein and makes all of he allegations therein contained parts of this fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Louisa Dittemore, on or about the — day of August, 1907, and in consideration of the eceipt by the Great Western Life Insurance Company, of the sum of one hundred fifty ($150.00) dollars, which said annuity rtificate is similar in every respect, containing the same provisions, greements and covenants, except as to date, amount and name holder, as the annuity certificate described in the first count d attached thereto; and for the sake of brevity the certificate in is count is not copied, but reference is made to the copy attached the first count to the same effect as if here copied and attached full; and that the said Louisa Dittemore, for a good and valuable nsideration assigned, transferred and delivered to the plaintiff erein all of her right, title and interest therein and all of her right, le and interest growing out of the matters and things herein leged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Sixth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Robert M. Forbes on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached thereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Robert M. Forbes for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

24 Seventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventh count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to H. C. Bowman on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said H. C. Bowman for a good and valuable consideration asigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six

($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to George J. Kumpf, on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said George J. Kumpf for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

25

Ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to George Kumpf on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said George Kumpf for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Tenth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this tenth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Lena Kumpf on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of four hundred fifty ($450.00) dollars which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Lena Kumpf for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of four hundred fourteen ($414.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

26 Eleventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eleventh count, as far as the same are applicable, and except as follows:

That the annuity certificate was issued to Henry C. Kumpf on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Henry C. Kumpf, for a good and valuable consideration assigned, transferred and delievered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Twelfth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twelfth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Helen E. J. Kumpf on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Helen E. J. Kumpf, for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

27

Thirteenth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this thirteenth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to J. A. Schrey on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said J. A. Schrey for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Fourteenth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fourteenth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Joseph Inthrum on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Joseph Inthrum for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

28

Fifteenth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifteenth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to F. L. Pothast on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said F. L. Pothast for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Sixteenth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixteenth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to J. C. Fear, on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of nine hundred ($900.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said J. C. Fear for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of eight hundred twenty-eight ($828.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

29

Seventeenth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventeenth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to J. F. Mathis on or about the — day of August, 1907, and in consideration of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said J. F. Mathis for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighteenth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighteenth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to W. H. Mathis on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. H. Mathis for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

30 Nineteenth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this nineteenth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Ray Taylor on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Ray Taylor for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Twentieth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twentieth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to S. N. Bridgeman on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date; amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said S. N. Bridgeman for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

31

Twenty-first Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-first count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to B. F. McLean on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said B. F. McLean for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Twenty-second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-second count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to S. B. Amidon on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said S. B. Amidon, for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

32 Twenty-third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-third count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 77, was issued to Gertrude Pendleton on or about the 10th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Gertrude Pendleton for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Twenty-fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 275 was issued to William A. Austin, on or about the 15th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said William A. Austin for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

33

Twenty-fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 327 was issued to W. P. Burrows, on or about the 22d day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. P. Burrows for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Twenty-sixth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-sixth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 276 was issued to O. G. Hinshaw on or about the 15th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said O. G. Hinshaw for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per anum, and for costs.

34

Twenty-seventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-seventh count so far as the same are applicable, and except as follows:

That the annuity certificate No. 517 was issued to W. H. Hinshaw on or about the 29th day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. H. Hinshaw for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Twenty-eighth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 301 was issued to William W. Miller on or about the 19th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said William W. Miller for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

35

Twenty-ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this twenty-ninth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 229 was issued to W. D. Smith on or about the 22d day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. D. Smith for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Thirtieth Count.

Plaintiff here refers to the first count herein and makes all the allegations therein contained parts of this thirtieth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 280 was issued to John Whitehurst on or about the 15th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full, and that the said John Whitehurst for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

36 Thirty-first Count.

Plaintiff here refers to the first count herein and makes all the allegations therein contained parts of this thirty-first count so far as the same are applicable, and except as follows:

That the annuity certificate No. 70 was issued to Arthur Capper on or about the 10th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full, and that the said Arthur Capper for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Thirty-second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this thirty-second count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 64 was issued to Charles Curtis on or about the 4th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of six hundred ($600.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Charles Curtis for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of five hundred fifty-two ($552.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

37

Thirty-third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this thirty-third count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 284 was issued to James Ball on or about the 15th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said James Ball for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Thirty-fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this thirty-fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 357 was issued to I. W. Baughman on or about the 31st day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of four hundred fifty ($450.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said I. W. Baughman for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of four hundred fourteen ($414.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

38 Thirty-fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this thirty-fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 286 was issued to Fred Bonebrake on or about the 15th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of four hundred fifty ($450.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Fred Bonebrake for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of four hundred fourteen ($414.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Thirty-Sixth Count.

Plaintiff here refers to the first count herein and makes all of he allegations therein contained parts of this thirty-sixth count, so ar as the same are applicable, and except as follows:

That the annuity certificate No. 643 was issued to E. F. Bolton n or about the 6th day of February, 1908, and in consideration f the receipt by the Great Western Life Insurance Company of he sum of twelve hundred ($1,200.00) dollars, which said annuity ertificate is similar in every respect, containing the same provisions, greements and covenants, except as to date, amount and name of older, as the annuity certificate described in the first count and ttached hereto; and for the sake of brevity the certificate in this ount is not copied, but reference is made to the copy attached to he first count to the same effect as if here copied and attached in ull; and that the said E. R. Bolton for a good and valuable consider- tion assigned, transferred and delivered to the plaintiff herein all of is right, title and interest therein and all of his right, title and in- erest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment gainst the defendant in the sum of eleven hundred four ($1,104.00) ollars, with interest thereon at the rate of six per cent (6%) per nnum, and for costs.

9

Thirty-seventh Count.

Plaintiff here refers to the first count herein and makes all of the llegations therein contained parts of this thirty-seventh count, so ır as the same are applicable, and except as follows:

That the annuity certificate No. 643 was issued to E. R. Bolton n or about the 3d day of October, 1907, and in consideration of the eceipt by the Great Western Life Insurance Company of the sum one thousand fifty ($1,050.00) dollars, which said annuity certifi- te is similar in every respect, containing the same provisions, greements and covenants, except as to date, amount and name of older, as the annuity certificate described in the first count and at- ched hereto; and for the sake of brevity the certificate in this count not copied, but reference is made to the copy attached to the first unt to the same effect as if here copied and attached in full; and at the said E. R. Bolton for a good and valuable consideration as- gned, transferred and delivered to the plaintiff herein all of his ght, title and interest therein and all of his right, title and interest owing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment ainst the defendant in the sum of nine hundred sixty-six ($966.00) llars, with interest thereon at the rate of six per cent (6%) per num, and for costs.

Thirty-eighth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this thirty-eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate #642 was issued to Flora B. Cameron on or about the 6th day of Feby., 1908, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one thousand fifty ($1,050.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached in full; and that the said Flora B. Cameron for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of nine hundred sixty-six ($966.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

40 Thirty-ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this thirty-ninth count so far as the same are applicable, and except as follows:

That the annuity certificate #614 was issued to Flora B. Cameron on or about the 3d day of October, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of twelve hundred ($1,200.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Flora B. Cameron for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of eleven hundred four ($1,104.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Fortieth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fortieth count, so far as the same are applicable, and except as follows:

That the annuity certificate #641 was issued to W. W. Cameron on or about the 6th day of February, 1908, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. W. Cameron for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

41

Forty-first Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this thirty-first count, so far as the same are applicable, and except as follows:

That the annuity certificate #417 was issued to W. W. Cameron on or about the 12th day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. W. Cameron for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Forty-second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this forty-second count, so far as the same are applicable, and except as follows:

That the annuity certificate #251 was issued to R. D. Carpenter on or about the 6th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of four hundred fifty ($450.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said R. D. Carpenter for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of four hundred fourteen ($414.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

42 Forty-third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this forty-third count, so far as the same are applicable, and except as follows:

That the annuity certificate #254 was issued to Anna R. Carpenter on or about the 6th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of four hundred fifty ($450.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Anna R. Carpenter for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of four hundred fourteen ($414.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Forty-fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this forty-fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Paul E. Coil on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Paul E. Coil for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

43

Forty-fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this forty-fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate #410 was issued to Robert Craig on or about the 8th day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Robert Craig for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title, and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Forty-sixth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this forty-sixth count, so far as the same are applicable, and except as follows:

That the annuity certificate #194 was issued to Garnett Elliott on or about the 1st day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Garnett Elliott for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

44 Forty-seventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this forty-seventh count, so far as the same are applicable, and except as follows:

That the annuity certificate #588 was issued to W. T. Embree on or about the 31st day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. T. Embree for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Forty-eighth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this forty-eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Mary Gerber on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Mary Gerber for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

45 ## Forty-ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this forty-ninth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 620 was issued to John C. Goering on or about the 30th day of October, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said John C. Goering for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Fiftieth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fiftieth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 122 was issued to Joseph G. Goering on or about the 17th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Joseph G. Goering for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

46 Fifty-first Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-first count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 119 was issued to C. H. Goering on or about the 17th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, and which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said C. H. Goering for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs..

Fifty-second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-second count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 114 was issued to R. A. Goerz, on or about the 17th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said R. A. Goerz for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

47

Fifty-third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-third count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 332 was issued to William Hart on or about the 24th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars which said annuity certificate is similar in every respect containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said William Hart for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Fifty-fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 341 was issued to L. T. Hussey on or about the 27th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto, and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said L. T. Hussey for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

48 Fifty-fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 241 was issued to E. J. Krause on or about the 6th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said E. J. Krause for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Fifty-sixth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-sixth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 242 was issued to C. H. Krause on or about the 6th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said C. H. Krause for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

49

Fifty-seventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-seventh count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Louis W. Jones on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Louis W. Jones for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises plaintiff prays judgment against the defendant in sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Fifty-eighth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to F. S. Larrabee on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said F. S. Larrabee for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

50

Fifty-ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this fifty-ninth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 277 was issued to F. S. Larrabee on or about the 15th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said F. S. Larrabee for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Sixtieth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of the sixtieth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to C. H. Lee on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said C. H. Lee for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

51

Sixty-first Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-first count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 463 was issued to Evan J. Morgan on or about the 16th day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached herto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Evan J. Morgan for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Sixty-second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-second count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 120 was issued to C. T. Nissen on or about the 17th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said C. T. Nissen for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

52

Sixty-third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-third count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 195 was issued to S. W. Nassaman on or about the 1st day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that said S. W. Nassaman for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Sixty-fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 109 was issued to J. G. Regier on or about the 17th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said J. G. Regier for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

53 Sixty-fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 389 was issued to J. N. Rose on or about the 5th day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said J. N. Rose for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Sixty-sixth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-sixth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 225 was issued to J. N. Rose on or about the 3d day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said J. N. Rose for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

54 Sixty-seventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-seventh count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 367 was issued to Joseph Rowell on or about the 2d day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Joseph Rowell for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Sixty-eighth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to A. F. Schaub on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said A. F. Schaub for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

55

Sixty-ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this sixty-ninth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 279 was issued to R. S. Thompson on or about the 15th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said R. S. Thompson for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Seventieth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventieth count, so far as the same are applicable, and except as follows:

That the annuity certificate #506 was issued to E. G. Van Ness on or about the 27th day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said E. G. Van Ness for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six dollars ($276.00), with interest thereon at the rate of six per cent (6%) per annum, and for costs.

56 Seventy-first Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-first count, so far as the same are applicable, and except as follows:

That the annuity certificate #238 was issued to Theodore P. Walton on or about the 6th day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and atached in full; and that the said Theodore P. Walton for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Seventy-second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-second count, so far as the same are applicable, and except as follows:

That the annuity certificate #213 was issued to Cora J. Wells on or about the 1st day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Cora J. Wells for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

57 Seventy-third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-third count, so far as the same are applicable, and except as follows:

That the annuity certificate #169 was issued to J. T. Lafferty on or about the 27th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of four hundred fifty ($450.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the asid J. T. Lafferty for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of four hundred fourteen ($414.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Seventy-fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate #223 was issued to Hugh J. Smith on or about the 3d day of July, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Hugh J. Smith for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

58 Seventy-fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate #172 was issued to C. R. Wilkins on or about the 28th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that C. R. Wilkins for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Seventy-sixth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-sixth count, so far as the same are applicable, and except as follows:

That the annuity certificate #476 was issued to Edward T. Pendleton on or about the 20th day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Edward T. Pendleton for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

59 Seventy-seventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-seventh count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to S. E. Hunt on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said S. E. Hunt for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Seventy-eighth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to F. E. Cayot on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said F. E. Cayot for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Seventy-ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this seventy-ninth count, so far as the same are applicable, and except as follows:

60 That the annuity certificate was issued to John Nicholson on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said John Nicholson for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eightieth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eightieth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to S. Lehman on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said S. Lehman for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title, and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent per annum and for costs.

Eighty-first Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-first count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to C. Lehman on or about the — day of August, 1907, and in consideration of the re-
61 ceipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied; but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said C. Lehman for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighty-second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-second count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to C. F. Classen on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of six hundred ($600.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count and to the same effect as if here copied and attached in full; and that the said C. F. Classen for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of five hundred fifty-two ($552.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighty-third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-third count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to A. B. Gilbert on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and
62 covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said A. B. Gilbert for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighty-fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to W. E. Grove on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. E. Grove for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighty-fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to C. E. Finley on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count
63 and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said C. E. Finley for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighty-sixth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-sixth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to H. H. Wiggins on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said H. H. Wiggins for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighty-seventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-seventh count, so far as the same are applicable, and except as follows:

That this annuity certificate was issued to C. L. Davis on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this
61 count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said C. L. Davis for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighty-eighth count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to A. E. Smolt on or about the — day of August, 1907 and in consideration of the receipt by the Great Western Life Insurance Company of the sum of fifteen hundred ($1,500.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said A. E. Smolt for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Eighty-ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this eighty-ninth count so far as the same are applicable, and except as follows:

That the annuity certificate was issued to W. G. Cheney on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of four hundred fifty ($450.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count
65 is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said W. G. Cheney for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of four hundred fourteen ($414.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninetieth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninetieth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to L. C. Horst on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said L. C. Horst for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-first Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-first count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to S. M. Swartz on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that
66 the said S. M. Swartz for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-second count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to H. C. Suderman on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said H. C. Suderman for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-third count so far as the same are applicable, and except as follows:

That the annuity certificate was issued to P. M. Hoisington on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity, the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said P. M. Hoisington for a good and valuable con-
67 sideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendent in the sum of two hundred seventy — ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to F. D. Kaufman on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said F. D. Kaufman for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-fifth count, so far as the same ar applicable, and except as follows:

That the annuity certificate was issued to C. E. Stephens on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said C. E. Stephens for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his
68 right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-sixth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-sixth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Early Carder on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of seven hundred fifty ($750.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Early Carder for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of this right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of six hundred ninety ($690.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-seventh Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-seventh count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to F. S. Hurd on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said F. S. Hurd for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

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Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-eighth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-eighth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to E. W. Hoch on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said E. W. Hoch for a good and valuable consideration assigned, transferred, and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Ninety-ninth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this ninety-ninth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to H. J. Bone on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said H. J. Bone for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

70 Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One-hundredth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this one-hundredth count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 649 was issued to Daisy E. Cayot on or about the 27th day of February, 1908, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of twelve hundred ($1,200.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Daisy E. Cayot for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of her right, title and interest therein and all of her right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of eleven hundred four ($1,104.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One-hundred-first Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this one-hundred-first count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 392 was issued to William Kesl on or about the 5th day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said William Kesl for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight
71 ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One Hundred Second Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this one hundred second count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to E. H. Wittstein on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto, and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said E. H. Wittstein for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One Hundred Third Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this one hundred third count, so far as the same are applicable, and except as follows:

That the annuity certificate No. 116 was issued to John Linn on or about the 17th day of June, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars, which has annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said John Linn for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

72 One Hundred Fourth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this one hundred fourth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Henry Schnitzler on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of three hundred ($300.00) dollars which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Henry Schnitzler for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and interest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of two hundred seventy-six ($276.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One Hundred Fifth Count.

Plaintiff here refers to the first count herein and makes all of the allegations therein contained parts of this one hundred fifth count, so far as the same are applicable, and except as follows:

That the annuity certificate was issued to Franklin Adams on or about the — day of August, 1907, and in consideration of the receipt by the Great Western Life Insurance Company of the sum of one hundred fifty ($150.00) dollars, which said annuity certificate is similar in every respect, containing the same provisions, agreements and covenants, except as to date, amount and name of holder, as the annuity certificate described in the first count and attached hereto; and for the sake of brevity the certificate in this count is not copied, but reference is made to the copy attached to the first count to the same effect as if here copied and attached in full; and that the said Franklin Adams for a good and valuable consideration assigned, transferred and delivered to the plaintiff herein all of his right, title and interest therein and all of his right, title and nterest growing out of the matters and things herein alleged.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

73 One Hundred Sixth Count.

1. Plaintiff here refers to the first, second, sixth and seventh paragraphs of the first count herein and makes the same parts of this count, as fully and to the same extent as if here copied in full.

2. Plaintiff further alleges that on or about the 31st day of May, 1907, in consideration of the receipt by it of the sum of fifteen hundred ($1,500.00) dollars, the said Great Western Life Insurance Company issued to one S. D. Moherman its annuity investment certificate number 49, a copy of which is hereto attached, marked "Exhibit B" and the same is made a part of this count.

3. Plaintiff further alleges that under and by virtue of the provisions of said annuity investment certificate, and in consideration of the receipt by it of the sum of fifteen hundred ($1,500.00) dollars, the said Great Western Life Insurance Company promised and agreed to pay to the said S. D. Moherman annually during his life, and thereafter to his heirs and assigns, an annual dividend consisting of ten (10) shares of the proceeds of twenty-five cents (25c) per one thousand (1,000) of all insurance, except re-insurance, written by said company in the United States for fifty (50) years, from the date of its incorporation, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance, such dividends to be determined as follows: the total sum of said twenty-five cents (25c) per thousand ($1,000) dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by the number of shares issued, the quotient obtained to be the apportionment of each of said shares, and the total sum of ten (10) shares shall be the dividend payable hereunder within thirty days thereafter, number of certificates to be issued not to exceed five hundred (500). The said company further guaranteed that the first annual dividend on the certificate should not be less than eight per cent (8%) on the amount paid to the company for such certificate.

4. Plaintiff here refers to the fifth paragraph of the first count of this petition and makes the same a part of this count, as fully and to the same extent as if here copied in full.

5. Plaintiff further alleges that for good and valuable consideration the said S. D. Moherman sold, transferred, assigned and set over unto plaintiff the said annuity investment certificate, and all of his several rights and claims growing out of the matters and things aforesaid.

Wherefore, by reason of the premises, plaintiff prays judgment against the said defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, together with interest thereon at the rate of six per cent (6%) per annum, and for the costs of this action.

74 One Hundred Seventh Count.

Plaintiff here refers to the allegations of the one-hundred-sixth count herein and makes the same so far as applicable a part of this count, as fully and to the same extent as if here copied in full.

The exceptions are that the said investment certificate is numbered four and dated May 13, 1907, in the sum of one hundred fifty ($150.00) dollars and payable to J. C. McClintock; which said certificate is similar in all other respects to the certificate attached to the one-hundred-sixth count; and a copy of this certificate is not attached hereto, but reference made to the certificate attached to count one-hundred-six for the sake of brevity. And which certificate and all rights and benefits thereunder was for valuable consideration assigned to plaintiff herein.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One Hundred Eighth Count.

Plaintiff here refers to the allegations of the one-hundred-sixth count, herein and makes the same so far as applicable a part of this count, as fully and to the same extent as if here copied in full.

The exceptions are that the said investment certificate is numbered two (2) and dated May 13, 1907, in the sum of one hundred fifty ($150.00) dollars and payable to Robert T. Fox; which said certificate is similar in all other respects to the certificate attached to the one-hundred-sixth count; and a copy of this certificate is not attached hereto, but reference made to the certificate attached to count one-hundred-six for the sake of brevity. And which certificate and all rights and benefits thereunder was for valuable consideration assigned to plaintiff herein.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One Hundred Ninth Count.

Plaintiff here refers to the allegations of the one-hundred-sixth count herein and makes the same so far as applicable a part of this count, as fully and to the same extent as if here copied in full.

The exceptions are that the said investment certificate is numbered forty-five (45) and dated May 31, 1907, in the sum of one hundred fifty ($150.00) dollars and payable to E. W. Hoch; which said certificate is similar in all other respects to the certificate attached to the one-hundred-sixth count; and a copy of this certificate is not attached hereto, but reference made to the certificate attached

to count one-hundred-six for the sake of brevity. And which
75 certificate and all rights and benefits thereunder was for valuable consideration assigned to plaintiff herein.

Wherefore, by reason of the premises, plaintiff prays judgment against the said defendant in the sum of one hundred thirty-eight ($138.00) dollars, together with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One Hundred Tenth Count.

Plaintiff here refers to the allegations of the one-hundred-sixth count herein and makes the same so far as applicable a part of this count, as fully and to the same extent as if here copied in full.

The exceptions are that the said investment certificate is numbered thirty-eight (38) and dated May 28, 1907, in the sum of one hundred fifty ($150.00) dollars and payable to John L. Stratton; which said certificate is similar in all other respects to the certificate attached to the one-hundred-sixth count; and a copy of this certificate is not attached hereto, but reference made to the certificate attached to count one-hundred-six for the sake of brevity. And which certificate and all rights and benefits thereunder was for valuable consideration assigned to plaintiff herein.

Wherefore, by reason of the premises, plaintiff prays judgment against the said defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One Hundred Eleventh Count.

Plaintiff here refers to the allegations of the one-hundred-sixth count herein and makes the same so far as applicable a part of this count, as fully and to the same extent as if here copied in full.

The exceptions are that the said investment certificate is numbered fifty (50) and dated May 31, 1907, in the sum of fifteen hundred ($1,500.00) dollars and payable to C. A. Smith; which said certificate is similar in all other respects to the certificate attached to the one-hundred-sixth count; and a copy of this certificate is not attached hereto, but reference made to the certificate attached to count one-hundred-six for the sake of brevity. And which certificate and all rights and benefits thereunder was for valuable consideration assigned to plaintiff herein.

Wherefore, by reason of the premises, plaintiff prays judgment against the said defendant in the sum of thirteen hundred eighty ($1,380.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

One Hundred Twelfth Count.

Plaintiff here refers to the allegations of the one-hundred-sixth count herein and makes the same so far as applicable a part of this count, as fully and to the same extent as if here copied in full.

The exceptions are that the said investment certificate is numbered forty-seven (47) and dated May 31, 1907, in the sum of one
76 hundred fifty ($150.00) dollars and payable to Georgia Kibler; which said certificate is similar in all other respects to the certificate attached to the one-hundred-sixth count; and a copy of this certificate is not attached hereto, but reference made to the certificate attached to count one-hundred-six for the sake of brevity. And which certificate and all rights and benefits thereunder was for valuable consideration assigned to plaintiff herein.

Wherefore, by reason of the premises, plaintiff prays judgment against the said defendant in the sum of one hundred thirty-eight ($138.00) dollars, with interest thereon at the rate of six per cent (6%) per annum, and for costs.

Wherefore, by reason of the premises aforesaid, plaintiff prays judgment in the total sum of sixty thousand seven hundred twenty ($60.720.00) dollars, same being the total amount of the one-hundred-twelve (112) counts herein, together with interest thereon at the rate of six per cent (6%) per annum, and for the costs of this action.

EXHIBIT A.

The Great Western Life Insurance Company.

Kansas City, Missouri.

No. 391. One Share. $150.00.

Annuity Certificate.

Whereas, the Great Western Life Insurance Company (hereinafter called the Company), is desirous of qualifying for the writing of Life Insurance in a number of states, to the end that a large volume of business may be quickly and economically produced, and

Whereas, The Company is authorized by its Charter to carry on the business of Insurance upon the lives of individuals, and every insurance pertaining thereto or connected therewith, and to grant, purchase and dispose of annuities and endowments of every kind and description, and is specifically authorized, by Resolution of its Board of Directors, to dispose of annuities in the various States in which it desires to write Life Insurance, upon the basis, at par, of One Hundred and Fifty ($150.00) Dollars per share, and,

Whereas, John Kesl has paid to the Company for One of said shares, the sum of One Hundred Fifty Dollars,

Now, therefore, In consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof, an annuity, during his life, and thereafter to his heirs or personal representatives, of One shares of the proceeds of Twenty-five Cents Per One Thousand Dollars of all insurance, except reinsurance, written by the Company in the United States For Fifty Years From The Date Of Its Incorporation, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums

are received on said insurance; such annuity to be determined a follows, to-wit:

77 I. The aggregate of said twenty-five cents per One Thou sand Dollars of insurance shall be ascertained at the end o each calendar year, and such sum divided by Five Hundred; th quotient obtained shall be the apportionment to each of said shares and the total of One share thereof shall be the annuity payable here under, within thirty days thereafter.

II. The Company guarantees that the first annuity payable here under shall not be less than Eight (8%) Per Cent upon the amoun paid the Company therefor, as stated above.

III. This Certificate is assignable in writing and transferable onl on the books of the Company, in person or by attorney, upon pres entation of this Certificate at the Home Office of the Company.

In Witness Whereof, The Great Western Life Insurance Com pany has caused this Certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City Missouri, this 5th day of August, 1907.

[SEAL.] (Signed) O. L. VAN LANINGHAM,
President.

Attest:
E. L. BIERSMITH,
Secretary.

EXHIBIT B.

The Great Western Life Insurance Company.

Kansas City, Missouri.

No. 49. Ten Certificates. $1,500.00

Annuity Investment Certificate.

Whereas, The Great Western Life Insurance Company is desirous of qualifying for the writing of Life Insurance in a number of States, simultaneously, to the end that a large volume of business may be quickly and economically produced, and,

Whereas, the said The Great Western Life Insurance Company is authorized by its Board of Directors to issue to selected persons in the various States in which said Company desires to write Life Insurance, a total of Five Hundred (500) Investment Certificates or Shares of the par value of One Hundred Fifty Dollars ($150.00) each;

Therefore, in consideration of the payment by S. D. Moherman of Fifteen Hundred dollars for ten of said Investment Certificates, the receipt of which is hereby acknowledged, the said The Great Western Life Insurance Company hereby agrees to apportion and pay

to said S. D. Moherman, an annual dividend on such Certificates during his life and thereafter to his heirs or assigns consisting of ten shares of the proceeds of Twenty-five Cents ($.25) per One Thousand Dollars ($1,000) of all insurance, except, re-insurance, written by said Company in the United States for fifty years
78 from the date of its incorporation, on which premiums, computed on the annual basis, have been received in cash, and also for so long thereafter as premiums are received on said insurance; said dividend to be determined as follows:

I. The total sum of said Twenty-five Cents ($.25) per One Thousand Dollars ($1,000) of insurance shall be ascertained at the end of each calendar year, and such sum divided by the number of shares issued; the quotient obtained shall be the apportionment to each of such shares, and the total sum of ten shares shall be the dividend payable hereunder, within thirty days thereafter.

II. The number of these Certificates or Shares issued shall not exceed Five Hundred (500).

III. In the event of the death of said S. D. Moherman, the dividend hereunder shall be paid to his heirs or assigns.

IV. This Certificate is transferable only on the books of the Company in person or by attorney, on surrender of this certificate.

The Company guarantees that the First Annual Dividend on this Certificate shall not be less than eight per cent (8%) on the Par Value.

In Witness Whereof, The Great Western Life Insurance Company has caused this certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 31st day of May, A. D. 1907.

[SEAL.] (Signed) O. L. VAN LANINGHAM,
President.

E. L. BIERSMITH,
Secretary.

(Following attached to Certificate:)

Amendment.

Annuity Certificate No. 49 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part *of* thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agree to apportion and pay to the owner hereof."

No other provision of said certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D., 1907.

____ ____,
Owner and Holder of Said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By L. N. PAQUIN,
V. President.

Said second amended petition being marked on the back as follows:

"Filed May 7th, 1915. James B. Shoemaker, Clerk, by H. H. T."

79 *Defendant's Amended Answer to Plaintiff's Second Amended Petition.*

Comes now defendant, and for its amended answer to plaintiff's second amended petition and to each and every count thereof, states as follows, to-wit:

(1) It admits that it is, and that the Great Western Life Insurance Company (hereinafter called the Company) was, a corporation created by and existing under the life insurance laws of the State of Missouri; and that, heretofore, it acquired and took over the business of the Company in the manner prescribed by and in conformity with the laws of Missouri applicable to and governing the merger of life insurance companies; but it denies that thereby it assumed any liability on or under the certificates mentioned in the amended petition or for the money paid therefor.

(2) The certificates mentioned in the petition were, subsequently to the issuance thereof, amended by mutual consent of the parties thereto, to provide that all sums payable thereunder were payable only out of the earnings of the Company, and defendant says that there were no such earnings. Such amendments were in writing and read substantially as follows:

"Amendment.

"Annuity Certificate No. — issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words 'Out of the earnings of the Company' are added thereto (and made a part thereof) immediately after the words 'Now therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof.'

"No other provision of said certificate shall be modified or affected hereby.

"Dated this thirtieth day of November, A. D., 1907."

——— ———,

Owner and Holder of said Certificate.

Accepted and amendment made as above provided,

THE GREAT WESTERN LIFE INSURANCE CO.,

By ——— ———,

President.

(3) If plaintiff or the holders of said certificates ever had the cause of action claimed (which defendant denies), the same accrued more than five years prior to the institution of this action, and is barred by the Statute of Limitations of Missouri.

(4) That heretofore (and prior to said merger) in cause number 3367, entitled J. M. Wagstaff and others vs. Great Western Life Insurance Company and others, the Circuit (now District) Court of the United States for the Western Division of the Western District of Missouri, a court having jurisdiction of the subject matter thereof and of the parties thereto and of many persons (including
80 plaintiff herein and the holders and owners of said certificates) defending for themselves and for all others of the class constituting the holders of said certificates (the questions at issue being of common or general interest to the many persons, constituting such class, so numerous as to make it impracticable to bring them all personally before the court) made and entered on August 27, 1908, a final judgment and decree providing, among other things as follows:

"Whereas it has further been the plan of the said reorganization of the said Life Insurance Company to permit holders of socalled annuity certificates heretofore issued by the said Life Insurance Company, upon the payment of the sum of $37.50 upon each share of such certificates and upon the surrender and cancellation of such certificates to receive of the capital stock of the said Life Insurance Company stock of the said Life Insurance Company of the par value equal to one-half of the amount of such payment.

Certain certificate holders have already agreed to this, aggregating more than one-half thereof, and all such annuity certificate holders who have not so done are hereby given the privilege of so doing for twenty days from date hereof, to avail himself of such privilege, and any such annuity certificate holder failing to so avail himself within such period of time of 20 days from this date shall no longer have such privilege or right, and such annuity certificate holders shall thereafter be barred and estopped from making any claim of any kind whatsoever against said Life Insurance Company or officers or stockholders thereof, or against any assets of said company, and such annuity certificates will then and thereby be fully can-

celled in law and in equity, and such annuity certificate holders will have no further rights, claims or demands against said company, its officers, stockholders assets or property on account thereof."

Defendant further states that plaintiff herein appeared in said suit for himself and certain other annuity certificate holders (not specifically named).

Defendant further states that by said decree and the conduct of said holders of said annuity certificates and their assignee they have been estopped from asserting any claim, demand or right of action arising out of same or based on same or for any money alleged to have been paid for same, and have waived and forfeited any right of action (if any) and any and all demands or claims arising out of same or based thereon or for any money alleged to have been paid for same.

Defendant further states that the question of any right or cause of action or demand growing out of or based on said annuity certificates or for any money paid therefor has been finally, fully and forever adjudicated and discharged, in said suit in the United States Circuit (now District) Court of the United States for the Western Division of the Western District of Missouri above mentioned.

81 Further answering, defendant states that said final judgment and decree above mentioned canceled and held for naught the certificates mentioned in plaintiff's second amended petition herein and discharged the Insurance Company from any and all liability on account of or growing out of same or for any liability for any money paid therefor. A true copy of said judgment and decree is hereto attached and made a part hereof.

(5) That an order was made by said court in said cause directing a sale by its receivers of the property and assets of the Company, and thereupon and in pursuance of the decree aforesaid, certain of its stockholders and holders of annuity and investment certificates affected a reorganization of its business and affairs by paying into the treasury thereof, as capital and purchase price of said property and assets, sums of money aggregating more than its authorized capital stock and equal to or in excess of the actual and market value of all the property and assets of the company, free from any claim against it on account of said annuity certificates and investment certificates, if any such claims existed (which defendant denies), notwithstanding the corporate identity of the company was not changed.

(6) Further answering, defendant denies each and every allegation in plaintiff's second amended petition contained and each and every count thereof not hereinabove admitted.

Wherefore, defendant prays that it may go hence without day and for judgment for its costs in this behalf expended.

LESLIE J. LYONS,
HADLEY, COOPER, NEEL & WRIGHT,
Attorneys for Defendant.

Afterwards, to-wit, on the 24th day of July, 1908, the following order of reference was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

3367.

J. M. WAGSTAFF et al.

vs.

THE GREAT WESTERN AGENCY COMPANY et al.

Ordered that all intervening petitions heretofore filed herein be and the same are hereby referred to the Honorable Willard P. Hall, Master in Chancery, before whom the issues therein shall be made up, and it is further ordered that all persons having claims of any character against the Great Western Agency Company and The Great Western Life Insurance Company shall present the same in due form of intervention before said Master and upon the issues therein being completed before the Master, he shall proceed in due form and time to hear and determine the same and to render to this court his findings together with the evidence therein and his conclusions of the law of the case. It is further ordered that upon receipt of this order the Master give notice by two insertions, with an interval of one week between them, in two of the daily
82 newspapers of Kansas City, Missouri, that all claims and demands of whatsoever character held by any person, company or corporation against the said defendant companies shall be duly presented to the Master for hearing on or before the 1st day of October, 1908, or the same will be forever barred.

It is further ordered that the clerk of this court forthwith make a certified copy of this order and forward the same to the said Master.

(Signed) JNO. F. PHILIPS,
Judge.

July 24th, 1908.

Afterwards, to-wit, on the 27th day of July, 1908, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

J. M. WAGSTAFF et al.

vs.

THE GREAT WESTERN AGENCY COMPANY et al.

It is ordered that all persons in interest shall have fifteen days from and after the making of the report by the receiver of the sale of the assets and property of the defendant companies to occur on the 28th day of July, 1908, in which to file objections to the confirmation and approval of said sale by the court.

(Signed) JNO. F. PHILLIPS,
Judge.

Afterwards, to-wit, on the 30th day of July, 1908, the receiver's report of sale was filed. And afterwards, to-wit, on the 4th day of August, 1908, objections of Philadelphia Life Insurance Co. to confirmation of the sale were filed, and afterwards, to-wit, on the 13th day of August, 1908, the objections of F. M. Pearl to the confirmation of sale were filed.

Afterwards, to-wit, on the 15th day of August, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. — In Equity.

J. M. WAGSTAFF, R. E. BROOKS, J. E. KEEL, H. E. ELLISON, L. A. Sherrard, George C. Anderson, A. L. Driggs, F. D. Shallabarger, J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Bar, J. S. Engle, P. B. Witmer, and Ira Puterbaugh, Complainants.

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN Life Insurance Company, O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall, and Julia W. Van Laningham, Defendants.

Order.

Now on this fifteenth day of August, 1908, being one of the regular days of the April, 1908, term of said court, the above cause came on to be heard upon the application of the receiver for the confirmation of the sale of the assets, properties and business
83 of The Great Western Life Insurance Company, in accordance with the bid of The Kansas City Life Insurance Company, the receiver, C. S. Jobes, Esquire, appearing in person and by his solicitor, E. L. Scarritt, Esquire; the Kansas City Life In-

rance Company, a bidder, appearing by R. J. Ingraham, its licitor; the Philadelphia Life Insurance Company, a bidder, appearing by W. F. Guthrie, its solicitor; the National Bank of Commerce, a creditor, appearing by H. C. Ward, its solicitor, and F. M. earl, and other stockholders of the Great Western Agency Company nd Annuity Certificate holders of The Great Western Life Insurance who are similarly situated, appearing by B. P. Waggoner and ames W. Orr, said stockholders praying a postponement of said earing, and representing to the court that the said stockholders and nnuity holders were endeavoring to raise from the stockholders nd annuity holders a sufficient fund to pay off all of the debts of he said The Great Western Life Insurance Company, and to meet ll of its obligations and to rehabilitate and reorganize said company, and it appearing to the court that there are reasonable rospects of the accomplishment of the reorganization on such plan, nd thereby secure to the creditors of said company the full payment of all of the debts or liabilities of said life insurance company.

It is there considered and ordered by the court that the further earing of the application of said receiver to conform the sale of said roperty and assets of The Great Western Life Insurance Company e and the same is, hereby postponed and continued until Tuesday, August 25, 1908, at nine o'clock, A. M., and

It is further ordered that if by said last named date the stockolders of The Great Western Agency Company and the Annuity 'ertificate holders of the said The Great Western Life Insurance 'ompany shall present to this court a feasible plan for the reorganization and rehabilitation of the said The Great Western Life Insurance Company and shall be able to pay all of its debts and obligations in full, then said stockholders and Annuity Certificate olders shall be permitted to proceed to said reorganization and when accomplished to the satisfaction of this court, the properties nd assets of said The Great Western Life Insurance Company shall be turned over and delivered to such stockholders and Annuity 'ertificate holders if they have acquired the capital stock of the aid Life Insurance Company, and in accordance with the further rder of this court.

It is further ordered that as a condition of the granting of such postponement that the reorganization committee, so called, of The Great Western Life Insurance Company, shall give to the receiver appointed in this cause, an indemnifying bond in the penal sum of ten thousand dollars conditioned for the payment of any and all damages which said receiver as such and the creditors of said Life Insurance Company and the bidders at said sale shall sustain, if any, and such bond having been presented to the court, it is hereby approved. The Philadelphia Life Insurance Company, one of
84 the bidders at said sale, having been required to furnish a bond in the penal sum of two hundred thousand dollars for the faithful carrying out of its bid and the performance of the conditions thereof, having presented its bond, said bond is likewise approved.

(Signed) SMITH McPHERSON,
Judge.

Afterwards, to-wit, on the 27th day of August, 1908, the following decree was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. Wagstaff, R. E. Brooks, J. E. Keel, H. E. Ellison, L. A. Sherrard, George C. Anderson, A. L. Driggs, F. D. Shellabarger, J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J. S. Engle, P. B. Witmer, and Ira Puterbaugh, Complainants,

vs.

The Great Western Agency Company, The Great Western Life Insurance Company, O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall and Julia W. Van Laningham, Defendants.

Orders and Decree.

Now on this 27th day of August, 1908, being one of the regular days of the April, 1908, term of said court, came on further to be heard the objections and exceptions of F. M. Pearl and other stockholders of The Great Western Agency Company and Annuity Certificate holders of the Great Western Life Insurance Company to the confirmation of the sale of the assets, properties and business of said The Great Western Life Insurance Company heretofore made by the receiver hereof, complainants appearing by John H. Atwood, Esq., and H. C. Timmonds, Esq., said receiver appearing in person and by E. L. Scarritt, Esquire, and Frank P. Sebree, Esquire, his solicitors; The Kansas City Life Insurance Company, a bidder at said sale, appearing by R. J. Ingraham, Esquire, its solicitor; the Philadelphia Life Insurance Company, a bidder at said sale, appearing by Charles M. Howell, Esquire, and Frank Smith, Esquire, its solicitors, Franklin Adams, J. Q. Cowee, and other interveners, appearing by A. L. Cooper, Esquire, their solicitor; said objectors appearing by E. A. Berry, Esquire, James W. Orr, Esquire, their solicitors; — Hess appearing by Hunt C. Moore, Esquire, his solicitor, and A. F. Sherman, Esquire, appearing for himself and certain other annuity certificate holders.

And said objections and exceptions being presented to the court, and said objectors praying leave to reorganize and rehabilitate the said The Great Western Life Insurance Company and to pay its debts, outstanding obligations and take over its properties, monies, credits and effects and restore and make good any impairment of its capital stock and thereafter conduct the business of the said The Great Western Life Insurance Company; and all parties being
85 before the court and being heard and the court being fully informed and advised, it is considered, ordered and decreed:

1. That the plan for the reorganization and rehabilitation of the d The Great Western Life Insurance Company presented to this art be, and the same is, hereby approved by the court upon the lowing terms and conditions, viz:

(*a*) That the receiver of said company forthwith make a com-ete inventory of all the properties, monies, credits, books and effects every kind or nature now in his possession or under his control in the possession or control of the present officers or directors of id company received from the said The Great Western Life In-rance Company, or later acquired in its behalf, and of any shares the stock of The Great Western Life Insurance Company held the directors and officers selected under the order of this court, id without delay turn over and deliver all of such property so in-ntoried to the officers and directors of the said The Great Western ife Insurance Company, to be hereafter named, and to take the ceipt of the president and secretary of such company, when so se-ected, therefor; whereupon all possession, control and dominion over ie property, credits and effects of the said The Great Western Life nsurance Company and of said company by said receiver including ie directors heretofore selected under the order of this court, shall ease and terminate and said officers and directors shall promptly nder their respective resignations as such and their terms of office re at an end.

(*b*) That immediately upon receipt of said properties, monies, redits and effects, as above set forth, W. T. Kemper of the Com-merce Trust Company, of Kansas City, Missouri, for and on behalf f The Great Western Life Insurance Company, who is hereby desig-ated for such purpose, shall proceed at once to pay off and satisfy ll the approved death claims now existing against the said The Great Western Life Insurance Company, as follows:

Death Claims Approved and Pending.

. B. Van Laningham	$7,500.00
A. H. Brown	2,500.00
L. Kerr	10,000.00
da C. Crosse	1,000.00
Frank E. Diessroth	1,000.00
Herman Biddle	10,000.00
Leo T. Lynch	2,000.00
John W. Brown	5,000.00
Joseph E. Parker	1,000.00
David E. Dodds	2,500.00
Charles Raithal	1,000.00
Ben Levy	2,000.00
W. G. Hardeman	1,000.00
B. K. Bailey	5,000.00
Wayland R. Benedict	2,000.00

86 and said Kemper shall proceed without delay to the payment of the following claims against said Life Insurance Company viz:

Claims for premiums on declaimed applications, aggregating approximately	$5,000.00
The claim of Hanna & Lupton (Kansas Loan Agreement)	$7,500.00
And return to them their two notes aggregating	12,500.00
And current bills and claims approximately aggregating	21,900.32
Subscriptions for proposed increase of capital stock, aggregating approximately	91,445.12

And return to such like subscribers not included in the above amount all notes taken for such like subscriptions in lieu of cash, such payments to be made to them or their authorized attorneys.

To the Illinois Life Insurance Company, account of reinsurance	654.91

or so much thereof as shall be owing.

Accident claims	11.43
Medical Examiners' fees	1,500.00

or so much thereof as shall be owing.

Balance due agents	2,332.25

or so much thereof as shall be owing.

And the said Life Insurance Company shall within thirty days from this date file with the clerk of this court vouchers, showing the payment of the aforesaid matters.

(2) Within two days from the receipt of the said monies, properties and assets of the said Life Insurance Company, as above provided, said company shall make and file with the clerk of this court a bond properly conditioned, with surety to be approved by the clerk for the use and benefit of the receiver, in the penal sum of five thousand dollars, for the payment of such claims as against said company which may be presented and approved, but not to cover any death claims nor in any way connected with annuity certificates.

(3) Inasmuch as the plan of reorganization of the said Life Insurance Company has provided that any stockholder of The Great Western Agency Company may upon the payment of the sum equal to four dollars per share of the capital stock of the said Life Insurance Company as will equal one-half of the amount so paid, and inasmuch as a large number of said stockholders have not yet availed themselves of this, it is by the court ordered that for a period of sixty days from and after this date, any such stockholder desiring to avail himself of such privilege may do so and the said Life Insurance Company shall receive such payment, and thereupon issue to such person the stock of the said Life Insurance Company in the proportion above specified.

Whereas, it has further been the plan of the said reorganization of the said Life Insurance Company to permit holders of so-
87 called annuity certificates heretofore issued by the said Life Insurance Company, upon the payment of the sum of $37.50 upon each share of such certificates and upon the surrender and cancellation of such certificates to receive of the capital stock of the said Life Insurance Company stock of the said Life Insurance Company of the par value equal to one-half of the amount of such payment.

Certain certificate holders have already agreed to this, aggregating more than one-half thereof, and all such annuity certificate holders who have not so done are hereby given the privilege of so doing for twenty days from date hereof, to avail himself of such privilege, and any such annuity certificate holder failing to so avail himself within such period of time of 20 days from this date shall no longer have such privilege or right, and such annuity certificate holders shall thereafter be barred and estopped from making any claim of any kind whatsoever against said Life Insurance Company or officers or stockholders thereof, or against any assets of said company, and such annuity certificates will then and thereby be fully cancelled in law and in equity, and such annuity certificate holders will have no further rights, claims or demands against said company, its officers, stockholders' assets or property on account thereof.

(4) It has been made to appear to this court that since the appointment of a receiver, May 18, 1908, and under his direction and promises, express and implied, first year premiums aggregating approximately thirty thousand dollars ($30,000.00) have been paid to him, the said receiver, by policy holders of The Great Western Life Insurance Company, which sum of money is now in the hands of Herman F. Lang, the present treasurer of said company. Said sum of $30,000 belongs to said Life Insurance Company, as reorganized and it will at once be paid over to said company as reorganized, by him, the said Lang, as treasurer, without delay. It is claimed that said fund of thirty thousand dollars in part is a trust fund, giving the right to such policy holders who have thus paid their premiums to the receiver to withdraw such premiums thus paid. Said trust is hereby recognized to all such policy holders, whose policies aggregate approximately $710,000.00, who may make the showing to the satisfaction and approval of this court that they have thus paid said premiums in whole or in part under the promise of any judge of this court or of the receiver such promise being either express or implied, and such premiums should be returned to those making such payments under such promises. But to avail themselves of such trust an application therefor, accompanied by the policy and policies, shall be filed with the clerk of this court within ten days from the notice thereof. And such notice shall be regarded and held to be complete when this part of the decree in substance and effect is deposited in the post office or any branch or box thereof of Kansas City, Missouri, in an envelope properly addressed and stamped, said address being

as shown by the books of said company. Any policy holder
88 forming a part of said $710,000.00 approximately, failing to file such application and policy within said time shall have no further claim as a beneficiary under said trust, and his rights thereto as such beneficiary of such trust shall be and is hereby decreed to be at an end and fully barred. And in the event of any such applications to participate in such trust being affirmatively decreed by this court, such policy and policies thus filed shall be and it is hereby decreed that they are fully cancelled and held for naught. And if any of such trusts are affirmatively decreed then and in that event there shall be refunded and paid to the receiver as shall be unearned for the balance of the year for which such premiums were paid. And within five days from this date the said The Great Western Life Insurance Company shall file with the clerk of this court a bond properly conditioned, with ample surety to be approved by the clerk of this court, in the penal sum of thirty thousand dollars for the immediate payment upon demand of such unearned premiums as shall be covered by decrees of this court to be entitled thereto.

The court finds that of the capital stock of said Life Insurance Company eight shares are held by individuals. The remaining 992 shares are held by C. S. Jobes, the receiver herein. But of said 992 shares of stock thus held by the receiver herein 445 shares thereof are deposited as collateral security with the National Bank of Commerce of Kansas City, Missouri, for the payment of $21,000.00 justly owing the said National Bank of Commerce of Kansas City, Missouri.

The receiver herein, C. S. Jobes, will sell at once, at private sale, to James Chappelle, Trustee, in trust for the purchasers of the stock of The Great Western Life Insurance Company at the upset price of eleven thousand dollars and as the property and assets of the Great Western Agency Company the said 992 shares of the capital stock of the said The Great Western Life Insurance Company, subject, however, to the lien and equities in favor of the said National Bank of Commerce of Kansas City, Missouri, for the payment of the said $21,000.00; and both said receiver and said National Bank of Commerce, upon payment to them respectively, of said sum shall promptly surrender and deliver to him, the said James Chappelle, Trustee, all of the said capital stock held by them or either of them, and shall duly assign the same to the said James Chappelle, Trustee, and the said stock shall be by said Life Insurance Company at once properly transferred on the books of said company to him the said James Chappelle, Trustee.

The receiver herein for his services is hereby allowed the sum of twenty-five hundred dollars ($2,500.00).

And he is hereby allowed, in full for his solicitors' fees, the sum of three thousand dollars ($3,000.00).

And —— Case, the president of said company is hereby allowed the sum of twelve hundred dollars ($1,200.00).

And said Herman F. Lang, as treasurer, is hereby allowed the sum of three hundred and fifty dollars ($350.00).

89 After the appointment of a receiver herein the former directors all resigned, and with the approval of this court

nine other directors were elected in lieu of the former directors. Each of said new directors is allowed one hundred dollars, or nine hundred dollars in the aggregate.

For the month of August, 1908, there will be a rent account due of eight hundred dollars; there will be office expenses estimated for the month of August, 1908, of one thousand dollars.

Taxable court costs due the Circuit Court of Jackson County, Missouri, estimated at ($125.00) one hundred and twenty-five dollars. Said allowance for said services, fees, compensation and salaries to officers and solicitors are hereby established in said sums, which shall be paid and when so paid shall be in full for such claims. And the aforesaid items and one now to be mentioned, aggregate ten thousand, seven hundred and seventy-nine and 17/100 dollars ($10,799.17), for which reason the upset price of eleven thousand dollars for the sale of said stock is hereby fixed. The other items of office expenses and taxable costs are subject to revision hereafter by this court; and said sums thus fixed shall be at once paid. Also there is allowed $904.17 for examination of the Agency and Life affairs which is to be paid.

The said The Great Western Life Insurance Company reorganized, has deposited as an additional sum for carrying out these orders and decrees with the Commerce Trust Company, of Kansas City, Missouri, one hundred and thirty thousand dollars ($130,000.00). And W. T. Kemper, an officer of that Trust Company shall take credit on the books of said company for said monies, and at once pay out the same in accordance with this decree and file herein receipt therefor, which said words "at once" *is* hereby understood to mean within five days from the date hereof.

Thomson, Stanley & Price, for legal services, make claim for the months of June, July and August under attorneys' contract with said Life Insurance Company, amounting to $501.00, which shall at once be paid, provided said firm shall turn over all papers and evidences.

A. F. Sherman, holds annuity certificates face value fifteen hundred dollars. On account thereof he gave his note for $1,250.00, which he has not paid. The said Sherman is hereby given the privilege of surrendering said annuity certificates as fully cancelled upon the receipt by him of said note, in which event he the said Sherman will retain any dividend heretofore paid him on account of said certificates and he will have no claim against said company for any money he paid for said certificates. And the same right and privilege and burden is hereby given to and cast upon any other annuity certificate holder who has given a note or notes on account of the annuities.

Other claims now or that may hereafter be asserted not hereinbefore covered are passed for the future consideration of the court.

90 It is further ordered by the court that the respective bids of the Kansas City Life Insurance Company and the Philadelphia Life Insurance Company for the property, assets, business

and effects of the said, The Great Western Life Insurance Company are each declined, and the court declines to approve of either o said bids; and the receiver will at once return to them their re spective deposits, and the bonds that they or either of them hav filed herein *or* hereby declared to be at an end and the liability thereon, both as to principal and sureties, is at an end.

It is further ordered and decreed that the jurisdiction of thi court is fully retained, extended and continued from time to tim until this cause is finally concluded over all subjects—matte covered by any pleading now on file or that later on may be filed and over all parties whose names are now on the record and such other party or parties as may later on be brought into court, o who may come into court by any pleading. And all such partie now to the record, including the said The Great Western Lif Insurance Company, and all parties who may later on be mad parties herein, shall be bound by such further orders and decree as to the court may seem necessary and proper. All of which ar ordered of record this August 27th, 1908.

(Signed) SMITH McPHERSON,
Judge.

Said answer being marked on the black as follows:

"Filed December 27th, 1917. James B. Shoemaker, Clerk, by B. D. Moore, D. C."

Reply to Defendant's Answer.

Now on this day comes the plaintiff and for reply to the de fendant's amended answer, alleges and avers:

(1)

Plaintiff denies each and every allegation contained in paragraph 2 of said amended answer.

Plaintiff, further answering said paragraph 2, alleges and aver that, if such certificates were amended, as alleged in said paragraph which plaintiff specifically denies, such amendment was attempted to be made long after the certificate holders had fully executed their contracts by paying to the said Great Western Life Insurance Company the full amount required to be paid, as provided in said certificates, and any such changes or amendments, as alleged, were wholly without any consideration whatever.

(2)

And plaintiff specifically denies all of the allegations of paragraph 3 of said amended answer.

91 (3)

Plaintiff, for reply to the 4th and 5th paragraphs of defendant's amended answer, alleges and avers that it denies each and every allegation therein contained.

And plaintiff further alleges that, if any such decree was ever made, as alleged in said amended answer, the same was merely interlocutory and not a final decree, and, further was wholly void and of no effect so far as the certificates mentioned in the petition in this case and the holders thereof and the assignee, plaintiff herein, are concerned, for the reason that the parties to said Federal suit were not the same as the parties to this suit, and, further, the said Federal Court never acquired or had any jurisdiction over the subject matter in controversy herein, nor over such certificates or the holders thereof, and that the holders of said certificates, at the time of the making of said decree, if any was made, were in no way parties to said suit and did not participate therein and were not bound thereby.

And plaintiff specifically denies that he appeared in said suit for and on behalf of the certificate holders, mentioned in said petition, nor for and on behalf of himself as the assignee of such certificate holders; and plaintiff says that the certificates mentioned and described in said petition were assigned to him long after the making of said alleged decree in said court.

(4)

And plaintiff, further replying to said answer, alleges and avers that heretofore and prior to the 10th day of December, 1912, the said defendant herein and the Great Western Life Insurance Company desired to consolidate and the defendant to take over all of the property and assets of the said Great Western Life Insurance Company, and to that end the said companies presented to the Superintendent of Insurance of the State of Missouri, he having jurisdiction of such matters, certain articles of agreement and consolidation between the defendant and the said Great Western Life Insurance Company, such articles of agreement having been made and signed by said companies on or about the 16th day of September, 1912, and at said time requested that such proposed articles of agreement, or such modifications as might seem to the Commission, as provided by the Statutes of the State of Missouri, to be for the best interests of the policy holders and stockholders of said company, should be confirmed; and that, thereafter and after a hearing upon said petition and said agreement before such Insurance Department, the said Insurance Commissioner, as authorized by law, required that such articles of agreement should be modified by adding to said articles of consolidation the following:

"In order to preserve all the rights, if any, of the holders of annuity and investment certificates heretofore issued by The Great Western Life Insurance Company and allow them all of the divi-

dends or payments to which they might be entitled un
92 such certificates in the event The Great Western Life
surance Company should have continued in the life ins
ance business for the full term provided in such certificates and
pay any amounts already due thereon, the International Life Ins
ance Company, for itself and its successors, hereby agrees that as
the said certificates, one suit may be brought in the courts of M
souri for such an amount as would give the Supreme Court ju
diction thereof on appeal, and the final judgment in such suit sh
be binding upon the International Life Insurance Company and
successors for all the certificates of the class or classes adjudicated
said suit, and in the event that the final decision in said suit sh
be that the annuity and investment certificates issued by The Gr
Western Life Insurance Company are valid and subsisting contra
and obligations against that company, then the said Internatio
Life Insurance Company agrees that it will pay to the holders
owners of such certificates the amount paid as the purchase price
such certificates, which payment shall be made at the agency of s
last named company in Kansas City, Missouri, and in the event s
International Life Insurance Company has no such agency, then
the First National Bank of Kansas City, Missouri, within ten da
from the time such certificates shall be presented for payment; or
said International Life Insurance Company shall prefer, it may el
to continue said annuity and investment certificates in full force a
effect, according to the terms thereof, except that the same shall
ply to all of the insurance written by said International Life Ins
ance Company during the term provided in said contracts exc
reinsurance and business acquired by merger other than present bu
ness of The Great Western by paying whatever is due and owi
upon said certificates by The Great Western Life Insurance Compa
at the date of this agreement, upon demand therefor, and by payi
from this date their proportionate part of ten cents per thousa
dollars of all insurance written, except reinsurance and business
quired by merger other than the present business of The Great We
ern in the place and stead of the twenty-five cents per thousand d
lars, as expressed in said certificates.

Nothing herein shall be construed as a waiver of any defen
which either The Great Western Life Insurance Company or the I
ternational Life Insurance Company may have against the validi
of or liability upon said certificates, nor shall it be construed to ta
away any right or remedy of any holder of any such certific
against the International Life Insurance Company."

And that such modification was adopted by the defendant here
and became valid and binding against this defendant, and by t
terms of such modified consolidation and agreement the said defen
ant in this case obligated itself to pay to the holders of such annui
certificates, including the holders of annuity certificates mentioned
the petition herein and in each count thereof, the amounts
money that had been paid by such holders for such certificates, pl

vided, only, that such certificates constituted a valid and legal
93 obligation against the said Great Western Life Insurance Company; or, in the event that the court determined that such certificate were valid and binding, that the said defendant might have the option of continuing such certificates in force and effect, with the modification as provided herein above;

That previous to such modification it was the contention of this defendant and of the Great Western Life Insurance Company that such certificates were invalid by reason of the fact that the said Great Western Life Insurance Company had no authority or jurisdiction under its charter to issue the same and that there was no contention made by this defendant or the said Great Western Life Insurance Company that such certificates or any rights thereof had expired by limitation or been extinguished by the decree of any court whatsoever; and that by the acceptance of such agreement this defendant became obligated and bound to the annuity certificate holders, mentioned in the petition in this case and each count therof, and is estopped and precluded from asserting or claiming that such certificates were extinguished by the decree of any court or barred by the statutes of limitation of the State of Missouri;

That thereafter and on the 22d day of February, 1913, the plaintiff herein, acting for and on behalf of the holders of the certificates mentioned in the petition herein and each count thereof, notified the defendant in writing that he demanded the performance of said contracts by defendant and the payment of each and every annuity due under such certificates, and that unless the terms of said annuity and investment certificates were fully and completely complied with, according to the terms thereof, by the said defendant, on or before the 7th day of March, 1913, that the holders and owners of said annuity and investment certificates rescinded and cancelled them and demanded a return of all moneys paid by each and every one of the holders of the certificates mentioned in each count of the petition herein, and so issued by the Great Western Life Insurance Company, less whatever sum or sums might have been paid upon such certificates; and that unless the demand for the return of said money was complied wtih on or before the 11th day of March, 1913, that suit would be instituted to enforce the rights of such holders of such certificates; and that the said defendant failed, neglected and refused to so comply with said request of the plaintiff, so made for and on behalf of the holders of the certificates mentioned and described in said petition and each count thereof.

Wherefore, by reason of the premises, plaintiff prays judgment as in said petition and in each count thereof; and for such other and further relief as to the court may seem equitable and just in the premises.

THAD B. LANDON,
ATWOOD, HILL & POPHAM,
Attorneys for Plaintiff.

94 STATE OF MISSOURI,
County of Jackson, ss:

Thad B. Landon, being first duly sworn, deposes and says:
That he is one of the attorneys for the plaintiff in the above entitl action, and is authorized to and makes this affidavit for and on b half of the plaintiff, and that the statements, averments and alleg tions contained in the foregoing reply are true, as he verily believe

THAD B. LANDON.

Subscribed and sworn to, before me, this 31st day of Decembe 1917.

[SEAL.]

MARY G. BRENNAN,
Notary Public in and for Jackson County, Missouri.

My commission expires Mar. 5, 1921.

Said reply being marked on the back as follows:

"Filed January 18th, 1918, James B. Shoemaker, by C. L Carr, D. C."

Trial.

Said cause was on Friday, January 18th, 1918, being the fifth day of the January Term, 1918, of the Circuit Court of Jackson County, Missouri, properly assigned for trial to Division Three of said court. On the 18th day of January, 1918, the same being the fifth day of the January Term, 1918, of Division Three of said court, said cause came on for trial in said division, before Honorable Thomas J. Seehorn, judge of said court, plaintiff appearing in person and by attorneys, and defendant appearing by attorneys, and thereupon plaintiff dismissed as to Counts 2, 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 102, 104, and 105. And thereafter the trial was entered into and the evidence heard and concluded, the court took said case under advisement.

Judgment.

And thereafter on Saturday, July 13th, 1918, being the thirty-second day of the May term, 1918, judgment was entered as shown by stipulation of parties following:

Stipulation.

It is hereby stipulated that in perfecting the appeal and preparing the record in this case in the Appellate Court it will be sufficient for the judgment in the case to be abstracted and set out as abstracted in the record proper, and it is stipulated that it will not be necessary to set out the judgment also in the bill of exceptions.

The setting out of the judgment in the bill of exceptions is expressly waived and the setting of the judgment out in full in either the bill of exceptions or the record proper is not required and is hereby waived under the agreement that the judgment as abstracted as hereinafter set out will be set out in the record proper.

95 The abstract of said judgment consented to and set out in the record proper is as follows:

And now on this 14th day of June, 1918, and on a regular day of the regular May, 1918, term of said court, the parties appear as above. And the court after having heard the evidence and the arguments of counsel and read and considered the briefs as submitted by each of the parties hereto, and being fully advised in the premises, finds the issues in favor of the plaintiff and against the defendant upon each of the following counts of said petition:

First, eighth, ninth, tenth, eleventh, twelfth, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty-eighth, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third fifty-fourth, fifty-fifth, fifty-sixth, fifty-seventh, fifty-eighth, fifty-ninth, sixtieth, sixty-first, sixty-second, sixty-third, sixty-fourth, sixty-fifth, sixty-sixth, sixty-seventh, sixty-eighth, sixty-ninth, seventieth, seventy-first, seventy-second, seventy-third, seventy-fourth, seventy-fifth, seventy-sixth, seventy-seventh, seventy-eighth, one hundredth, one hundred*th* and first, one hundred and third, one hundred and sixth, one hundred and seventh, one hundred and eighth, one hundred and ninth, one hundred and tenth, one hundred and eleventh, one hundred and twelfth.

The court finds the plaintiff is entitled to recover from the defendant, upon the first count of said petition, the sum of $184.62, with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the eighth count the sum of $807.35, with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the ninth count the sum of $1,815.20 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the tenth count the sum of $544.41 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the eleventh count the sum of $184.62 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the twelfth count the sum of $104.63 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the twenty-fourth count the sum of $362.94 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the twenty-fifth count the sum of $362.94 with interest from the date of this judgment at the rate of six per cent per annum until paid.

96 On the twenty-sixth count the sum of $807.35 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the twenty-seventh count the sum of $807.35 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the twenty-eighth count the sum of $807.35 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the twenty-ninth count the sum of $807.35 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirtieth count the sum of $184.62 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-first count the sum of $362.94 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-second count the sum of $725.00 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-third count the sum of $184.62 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-fourth count the sum of $544.41 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-fifth count the sum of $544.41 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-sixth count the sum of $1,451.76 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-seventh count the sum of $1,270.29 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-eighth count the sum of $1,270.29 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the thirty-ninth count the sum of $1,451.76 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the fortieth count the sum of $807.36 with interest from the date of this judgment at the rate of six per cent per annum until paid.

On the forty-first count the sum of $1,815.20 with interest from the date of this judgment at the rate of six per cent per annum until paid.

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On the forty-ninth count the sum of $362.94 with interest from the date of this judgment at the rate of six per cent per annum until paid.

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On the one hundred and twelfth count the sum of $184.62 with
terest from the date of this judgment at the rate of six per cent
r annum until paid.
Making an aggregate amount which plaintiff is entitled to recover
f and from defendant upon the counts of said petition above named
f $47,463.90 with interest from this date until paid at the rate
f six per cent per annum and the costs of this action.
It is therefore considered, ordered, adjudged and decreed that the
laintiff do have judgment and do have and recover of and from the
defendant, the total sum of $47,463.90, together with interest
00 thereon from this date at the rate of six (6) per cent per
num and the costs of this suit."

Dated this 23rd day of July, 1919.

THAD. B. LANDON,
ATWOOD, WICKERSHAM, POPHAM
HILL,
WM. THOMPSON,
Attorneys for Plaintiff.
COOPER, NEEL & WRIGHT,
Attorneys for Defendan

Motion for New Trial.

And thereafter, within four days after said judgment, and Saturday, July 13th, 1918, being the thirty-second day of the Term, 1918, defendant filed its motion for a new trial, which wa words and figures as follows (caption omitted)

"Motion for a New Trial.

Comes now the defendant International Life Insurance Comp and prays the court to set aside the judgment herein and to g defendant a new trial of this cause for the following reasons:

(1). The findings and judgment are against the law.

(2). The findings and judgment are against the evidence.

(3). The findings and judgment are against the law and evidence; and against the weight of the evidence.

(4). The judgment is excessive.

(5). The court erred in overruling defendant's objection to introduction of any testimony under the petition, to which ru and action of the court defendant excepted at the time.

(6). The court erred in overruling defendant's demurrer to pl tiff's evidence, to which motion of the court defendant excepte the time.

(7). The court erred in refusing to give defendant's perempt declaration of law requested at the end of the case, to which mo defendant excepted at the time.

(8). Under the pleadings and the evidence, the findings judgment should have been for the defendant.

(9). The court erred in refusing to give the declarations of and each of them requested by the defendant and numbered 1 3, 4 and 5, to which action of the court in refusing each of declarations of law, defendant at the time excepted.

(10). The court erred in admitting incompetent and impr testimony offered by the plaintiff, to which defendant excepted at time.

(11). The court erred in excluding competent, material and relevant testimony offered by defendant, to which action defendant excepted at the time.

COOPER, NEEL & WRIGHT,
LESLIE J. LYONS,
Attorneys for Defendant."

101 Said motion for a new trial being marked on the back as follows:

"Filed July 13th, 1918, James B. Shoemaker, Clerk, by W. G. D."

Order Overruling Motion for a New Trial.

Thereafter, on Saturday, July 13th, 1918, being the 32nd day of the May Term, 1918, said motion for a new trial was by the court overruled. Said order being as follows, to-wit: "Now defendant files motion for a new trial herein, which said motion is by the court heard and considered, and is now by the court overruled, to which action of the court, defendant duly excepts."

Application for Appeal and Order Allowing Same.

Thereafter on Saturday, July 13th, 1918, being the thirty-second day of the May Term, 1918, defendant filed its application for appeal in due form, which is set out on page — of this abstract, to which reference is made for contents, and an appeal was granted to this court, and on said date defendant was given to, on or before, November 1st, 1918, to file Bill of Exceptions. Said several orders being as follows, to-wit:

"Now defendant files application and affidavit for appeal from the judgment of this court, in this case to the Supreme Court of the State of Missouri, which said application is by the court, heard and considered and an appeal is allowed to the Supreme Court of the State of Missouri, and the defendant is, by the court, given to, on or before November 1st, 1918, to file a Bill of Exceptions herein."

Certified Copy of Judgment and Order Allowing Appeal.

A certified copy of the judgment and order granting an appeal in said cause, to this court, was filed herein on the 12th day of September, 1918, and is a part of the records of this court.

Order Extending Time to File Bill of Exceptions.

Thereafter from time to time, defendant's time to file Bill of Exceptions was, for good cause shown, duly extended until the last day of the January Term, 1919, being March 8th, 1919.

Order Filing Bill of Exceptions.

On the 8th day of March, 1919, the same being the 48th day of the January Term, 1919, of said court, the Bill of Exceptions was duly signed, sealed, allowed, ordered filed, filed and made a part of the record. The order therefor being as follows:

Now defendant presents to the court its Bill of Exceptions herein and same is by the court signed, sealed and allowed and ordered to be and is filed and made a part of the record in this cause.

All of the foregoing matters appear upon the record proper in this case.

102 The Bill of Exceptions duly filed as aforesaid is in full as follows:

In the Circuit Court of Jackson County, Missouri, at Kansas City
Division No. 3, January Term, 1918.

No. 75591.

ADRIAN F. SHERMAN, Plaintiff,

v.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI
Defendant.

Bill of Exceptions.

Be it remembered, that on Friday, the 18th day of January, 1918, at 9.30 o'clock a. m., and at the January Term, 1918, of the Circuit Court of Jackson County, Missouri, at Kansas City, in Division No. 3 thereof the above entitled cause coming on to be heard before the Honorable Thomas J. Seehorn, Judge of said Circuit Court—a jury having theretofore been duly waived—the plaintiff appearing by his attorneys, Messrs. Atwood & Hill, Judge William Thomson and Mr. Thad B. Landon; and the defendant appearing by its attorneys Messrs. Hadley, Cooper, Neel & Wright, and Mr. Leslie J. Lyons, the following proceedings were had, to-wit:

Mr. Landon: I presume, in order that Your Honor may understand this case, that I might make a little statement. The Great Western Life Insurance Company was an insurance company organized under the laws of Missouri. Some time in 1907 they issued what is known as Annuity Certificates, and others denominated Investment Certificates. The Annuity Certificates, as I say, were issued most of them in 1907—and, a few of them in 1908. They recited, in substance, that, "Whereas, the Great Western Life Insurance Company (hereinafter called the company), is desirous of qualifying for the writing of life insurance in a number of state

to the end that a large volume of business may be quickly and economically produced, and

Whereas, the company is authorized by its charter to carry on the business of insurance upon the lives of individuals, and every insurance pertaining thereto or connected therewith, and to grant, purchase and dispose of annuities and endowments of every kind and description, and is specifically authorized, by Resolution of its Board of Directors, to dispose of annuities in the various states in which it desires to write life insurance, upon the basis, at par, of one hundred fifty ($150.00) dollars per share,"

And, taking the 1st count of the petition—"whereas, John Kesl has paid to the company for one of said shares, the sum of one hundred fifty dollars.

Now therefore, in consideration of the premises, the company hereby agrees to apportion and pay to the owner hereof, an annuity, during his life, and thereafter to his heirs or personal representatives, of one shares of the proceeds of twenty-five cents per one thousand dollars of all insurance, except re-insurance, written by the company in the United States for fifty years from the date of its incor-
103 poration, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows, to-wit:

1. The aggregate of said twenty-five cents per one thousand dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by five hundred; the quotient obtained shall be the apportionment to each of said shares, and the total of one share thereof shall be the annuity payable hereunder, within thirty days thereafter."

I want to direct particular attention to the time at which the annuity is to be paid—that is, at the end of each calendar year, and payable in thirty days thereafter. I take it, that would make the first of the year, or the first of January, when the annuities would be computed; and, that they would be payable on the 31st day of January following.

"The company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the Company herefor, as stated above."

Now, this suit is brought by Mr. Sherman as assignee and holder of 112 of these Annuity Certificates. This first dividend of eight per cent upon the amount paid, was paid by the Company, I think, some time in December of 1907, or January of 1908; so that there would not be another dividend payable until the 30th or 31st day of January, 1909. After these certificates were issued and in 1908, there was some proceedings in the federal court, a receivership. The Great Western Life Insurance Company went into the hands of a receiver; and, it came out the same company as it went in! In 1912 The Great Western Life Insurance Company consolidated with the International Life Insurance Company of St. Louis, the

defendant in this case. That consolidation was permitted by th superintendent of insurance. The agreement between the two com panies was submitted to the superintendent of insurance, who mad certain modifications to the contract—which *which* were accepte and adopted. That modification, or one of them, is specifically ap plicable to these annuity certificates, in that it recites, that "if i should be determined that these contracts were valid and subsisin contracts and obligations of The Great Western Life Insurance Com pany, then that the International Life Insurance Company shoul undertake to pay back to the purchasers of the annuity certificate the amounts that they had paid in; and, that they might have th option of continuing the payment of the annual annuities," based however, not as in these certificates mentioned; but, based upon th total amount of insurance afterwards written by the Internationa Life Insurance Company; and it also agreed, that one suit migh be brought of sufficient amount to give the Supreme Court of th state jurisdiction upon appeal, and, that the determination of tha suit should determine the matter as to all of the annuity certificat holders.

104 This consolidation was perfected in November of 1912 and on the 22nd of February, 1913, Mr. Sherman made de mand upon the International Life Insurance Company for the per formance of the conditions of these contracts, and, further state that if the dividends already accrued were not paid by a certai date, that the holders would elect to declare a rescission of the con tract one way, and certain of them would sue for their money bac less the amounts of annuities that they had received from Th Great Western Life Insurance Company, which was one payme of eight per cent. To this demand, the response was that the matte would be presented to the board of directors of the Internationa Life Insurance Company, and, there was no further response t that demand; and, in April, 1913, this present suit was institute

Now, our theory is, that these annuity certificates and investmen certificates are no more nor no less than an agreement upon th part of the Insurance Company to pay dividends upon the amoun that is invested, or the amount that was loaned to the Company eac year, based upon the insurance written. In other words, that Th Great Western Life Insurance Company, for the purpose of increa ing their business, as a matter of fact obtained from these annuit certificate holders a loan of that much money for their use, upo which they paid the dividends; and that these certificates are in a respects similar to a note or a bond, an individual note, an individu bond, given by the Insurance Company. Those are the issues upo the main case; and, I may desire to reply to Senator Cooper.

Mr. Cooper: If Your Honor please, I want briefly to go bac to the point where Mr. Landon began, in order to show to You Honor what the situation was in the federal court suit. I think i 1906 it was, that there was organized under the laws of the Sta of Colorado a corporation known as The Great Western Agenc Company, with an authorized capital stock of $2,000,000.00. M O. L. Van Laningham was the moving spirit in the organization

that company; and, its directors were men who were associated with him in the life insurance business. At that time he had an agency contract with the State Life Insurance Company of Indianapolis, Indiana, extending over a long period of time, and, apparently a favorable contract. That contract, with the consent of the State Life Insurance Company, was assigned to The Great Western Agency Company, the Colorado corporation, to pay up its capital stock. That stock, then, was sold to a great many persons in the West, principally, in the State of Kansas. Funds were accumulated in the treasury of that company of something like $80,000.00; and, Mr. Van Laningham conceived the idea of organizing a life insurance company under the laws of the State of Missouri, with a capital stock of $100,000.00; and, that was done; and, this money already in the treasury of the agency company, was used, so far as it would go, to pay up the capital stock of The Great Western Life Insurance Company; and the balance of the money, it appears in the receivership case, was borrowed of the National Bank of Commerce,
105 I think, by the Agency Company, and, the stock of the Life Insurance Company put up as collateral security. That was about $21,000.00. So that, the money of the Agency Company plus what it borrowed, paid up the capital stock of the Life Insurance Company. Eight shares of the stock of the Life Insurance Company were held by individuals, Mr. Van Laningham and seven other men who were associated with him; and the entire stock was held by these eight men, who constituted the board of directors; but as to the 992 shares, they held those as trustees for the Agency Company. Now, that was the status of the corporations when The Great Western Life Insurance Company entered the life insurance business—that is, 992 shares of the stock was beneficially owned by the Agency Company, and eight shares by individuals. As I have said, the Insurance Company was organized in 1907. It proceeded to do a life insurance business with remarkable success. Some of the figures have slipped my mind, and, I haven't refreshed it in regard to some of the features; but, I think they wrote about $13,000,000 of insurance the first year. As Mr. Landon says, and because of the fact that there was very little profit in the first annual premium on the insurance policies, as it must stand not only the overhead expense, but the large commissions that are always paid—that is part of the history of the life insurance business—the first year's premium on each policy, these Annuity Certificates were issued, and Mr. Sherman holds now, I think, about fifteen per cent of them, possibly twenty per cent of them. I can furnish the exact figures to the court during the course of the trial; and the balance of them, or substantially all of the balance of them, participated in the reorganization which was mentioned awhile ago.

In May, 1908, certain stockholders of the Agency Company filed a bill in the Federal Court against the Agency Company and the Insurance Company, setting up grounds for equitable relief, mismanagement, insolvency, and the avoidance of a multiplicity of suits. Whereupon, after a hearing, Judge Pollock, sitting for Judge Phillips, appointed Mr. C. S. Jobes as receiver of the Agency Com-

pany. Among its assets were the 992 shares of Insurance Com stock; and, about half of it was on deposit with the National of Commerce as collateral security for the $21,000.00 loan. Sh after the receiver was appointed, and after he had made a re the receivership was extended to The Great Western Life I ance Company by a formal order and an order was made dire the receiver to sell the assets of the Insurance Company. B notices were published, and two bids received, one from the P delphia Life Insurance Company, and the other from the K City Life Insurance Company. By the terms of the bids of of those companies, the Annuity Certificates were eliminated, they bid upon the assets of the company, with the stipulation th liability was to be assumed by them under those Annuity Certifi Both of those bids were afterwards declined, and, for the reason goes to the meat of this case, which I will now state.

106 There were a multitude of these Agency stockholders certificate owners. I don't know how many Agency s holders there were; but, I think I am safe in saying around and, there were substantially the same number of these owne these certificates issued by the Insurance Company.

The Court (interrupting): What do you mean by "Ag stockholders"?

Mr. Cooper: The holders of the stock of the Agency Company this $2,000,000.00 Colorado corporation. I think Your Ho mind is clear on it. The Agency Company owned 992 shar stock; and of course, therefore, the Agency stockholders ha interest, as stockholders, twice removed or once removed, in Insurance Company. The case in the Federal Court attracted attention, not only in the public press, but there were ch and recharges, criminations, etc.; and the result was, that Agency stockholders and the certificate holders had an initial m ing at Topeka, and organized. That meeting was widely atte Then, meetings were subsequently held here in Kansas City, a Coates House; and they organized by electing, I think, Mr. J Chappelle, who was afterwards secretary of the Insurance C pany, as a sort of trustee, sometimes called "trustee," and s times "chairman of the re-organization committee." And devised this plan and presented it to the court: That inasmuc the bids received from the Philadelphia Life Insurance Com and the Kansas City Life Insurance Company eliminated the tificate holders, that they would pay into court a sum of m sufficient to pay all of the debts of the Insurance Company, liqui its affairs in toto and take over the concern.

Mr. Landon (interrupting): How much were the debts, Sena

Mr. Cooper: That is in the decree here.

Mr. Landon: $21,000.00, wasn't it?

Mr. Cooper: $21,000.00 was the indebtedness of the Ag Company. The indebtedness of the Life Insurance Company something over $100,000.00. There was $91,000.00 paid to certain class of creditors, among the list of debts found in the de

Mr. Landon (interrupting): How much was the bid, do you remember?

The Court: Now, I am getting the certificate holders confused here! Did the Agency Company issue any such certificates as these?

Mr. Cooper: No, sir.

The Court: Then, when you speak of "certificates" you have reference to the certificates sued upon in this case?

Mr. Cooper: Yes, sir.

Mr. Neel: Those sued upon, and all others of the same nature.

Mr. Cooper: There are about fifteen per cent of the certificate holders involved here; and about eighty-five or eighty per cent the others. Maybe I will not lose time by having Your Honor understand that these Agency stockholders were the owners of the stock. That is, the Agency Company was the owner of the stock of The Great Western Life Insurance Company; and that was their interest in the Annuity Certificates, the position they would occupy.

The Court: Well, now, the stockholders, the certificate holders and Agency Company stockholders, were the ones who offered to pay the debts?

Mr. Cooper: Yes, sir.

The Court: Now, they offered to pay what debts?

Mr. Cooper: The debts of the Life Insurance Company, and, also this $21,000.00 debt which the Agency Company owed. In other words, to put it in common parlance, they organized, a vast majority of them, into a reorganization committee; and through Mr. Chappelle, as trustee, they came into court and made that proposition, and said that they would stand an assessment pro rata, either upon the Agency Company's stock which they held, or upon the Annuity Certificates. That they would put that money up in the hands of Mr. Kemper, as trustee, to be paid out under order of court in liquidation of all of the debts of the Life Insurance Company, and $21,000.00 of the Agency Company; whereupon, the Company was to be turned back to them, freed from any and all claims of every character, except its life insurance contracts, and freed from any claims of these certificates; and that was done.

Now, there was a finding, if Your Honor please, by the Federal Court, after issue was joined, that both the Agency Company and the Life Insurance Company were involved; and, as alleged in the answer there, these men who participated in the re-organization—some three hundred of them or more, of both classes—maybe six hundred—paid into the Insurance Company more money than its entire authorized capital stock, in order to rehabilitate it. They put that money up with Mr. Kemper, as trustee, as the record shows, after incorporation that they made in furtherance of this proposed plan of reorganization, and put up approximately $130,000.00, which was paid out, as stated a while ago, under the court's order, so that the debts of the Insurance Company were paid.

Now, prior to the decree, a regular order had been made, that courts of equity make, with reference to creditors. Judge Willard P. Hall was appointed as Master in Chancery, and all claims of

creditors were referred to him by the general order; and he was directed to make publication, providing that the creditors should file their claims within certain times or be barred. And that was done. He filed his publications, and the court made a finding that they were proper and should be sustained. I mention that now because if these certificate holders at that time occupied the position of creditors, then, by not filing their claims under order of court they, of course, became barred, as an order of that sort does bar them, if not made in conformance with the rules of law, or the practice of a court of equity.

Now, on August 28th, 1908, when the decree was entered, Judge McPherson had succeeded Judge Pollock in the conduct of
108 this litigation; and Judge McPherson, by his decree, made the finding that over one-half of the certificate owners had already made their contributions to Mr. Kemper; and he gave to them twenty days more to come in and participate in the re-organization. By the plan of the re-organization, they would get stock in what they called in the decree as "The Re-Organized Insurance Company"; and it is our claim, that that was tantamount to a sale, anyway, in that decree it is provided that the bids of the two insurance companies were declined; and the receiver was directed to sell the stock of the Insurance Company, the Insurance Company stock, to Mr. Chappelle as trustee for these people, at an upset price, I think of $11,000.00, which, plus the money already paid in, was enough to liquidate the indebtedness; and if anyone failed to come in in the twenty days mentioned, these certificate holders, then, that they should be thereafter barred.

Well, of course, as Your Honor knows, if there is any occupation that is carefully scrutinized to see whether its stock is impaired, it is a life insurance company. If it is, then the superintendent of insurance will not permit them to do business. One of these requirements was that the stock should be restored, the Company being an insolvent concern. Now, in that case, that is called the Wagstaff case, because he was the first man named in the bill—there were a great many people who were parties to it. Mr. Sherman, in this case, was a party to that case. The decree recites that he appeared for himself and other Annuity Certificate holders. Mr. Chappelle appeared as trustee for the majority of the certificate holders, and filed a bill of intervention in their behalf. It was upon that, as well as upon the other pleadings in the case, that this decree of reorganization was finally made. So, we say, that upon the proposition, that the case stands as res adjudicata—inasmuch as this class was substantially represented in the case by people who were similarly situated—and he appeared for them. Mr. Orr, of the firm of Wagner & Orr——

The Court (interrupting): How was the reorganization perfected?

Mr. Cooper: The re-organization was perfected by a sale of the assets of the company to Mr. Chappelle, as trustee for the Agency stockholders and the Annuity Certificate holders, for $11,000.00 and——

The Court (interrupting): The sale of what?

Mr. Cooper: The sale of the stock of the Life Insurance Company, which was sold to Mr. Chappelle as trustee for the certificate holders and the Agency stockholders, for $11,000.00, the upset price, upon condition that this additional money would be used to liquidate all of the debts of the company.

The Court: I don't understand how the court could make an order for the sale of the stock.

Mr. Cooper: The Agency Company held this stock; and so far as the Agency Company was concerned, that would be in due course.

109 The Court: It was just the Agency Company stock that was sold?

Mr. Cooper: The stock which the Agency Company owned was sold to Mr. Chappelle upon two conditions; One was the upset price of $11,000.00, and the other was that this $11,000.00 was first to liquidate the debts of the company. The theory——

The Court (interrupting): In that same connection, I understood you to say that this proposition excluded all of these certificate holders.

Mr. Cooper: Those that didn't participate; yes, sir.

The Court: That order was entered when? There were two receiverships?

Mr. Cooper: No, one receivership. When the receiver was first appointed, both of these defendants were in the same case. When the receiver was first appointed, he was first the receiver of the Agency Company; but, subsequently, by order of the court soon after, the receivership was extended to the Life Company, so that both companies were in the hands of the court, by its receiver, and both companies were involved. Now, the court proceeded upon the theory disclosed in that decree. That here were a class of people interested in the concern which they were rehabilitating, by paying into the treasury of the company, its depleted treasury, an amount in excess of its capital stock, which was tantamount to a sale of the assets of the Company, and that all of its just debts were to be paid; and that without this being done, they would get nothing anyway; and that they must come in or be barred. In other words, he took the Company that had nothing for the benefit of these people who were rehabilitating it with their own money; and said that inasmuch as the certificate holders come in and rehabilited the Company, that they should take it free from the other certificate owners who declined to participate.

The Court (interrupting): Now, that was the condition.

Mr. Cooper: That was the condition under which they should come in; and that was the condition under which the bids of the Kansas City Life Insurance Company and the Philadelphia Life Insurance Company were declined, so that this re-organization could be perfected; and, as I say, the capital stock should be restored; and this was a $100,000.00 company, and it took something like $130,000.00 or $140,000.00 to pay its debts.

The Court: With this particular indebtedness wiped out?

Mr. Cooper: Yes, sir.

The Court: Now, that is the feature that I don't exactly understand.

Mr. Cooper: Well, that is probably the feature of the case, if Your Honor please.

The Court: I want to get your theory how these men were wiped out.

Mr. Cooper: I say this: That this Company was in the hands of a court of equity, and the court had the right to say to these certificate holders, who were creditors, had the right to say to the
110 creditors, now if you will come in here and re-organize the Company and restore its capital stock, all of you have the opportunity; and I will turn the Company over to you freed from any claims of those who do not participate. He had a mathematical basis to go upon there, too, if Your Honor please, because if that were not done and the assets sold in due course, there would be nothing left for the certificate owners anyway. So, it was a method to protect the certificate holders and the Agency stockholders too, by the assets of the Insurance Company, freed from the claims of any creditors.

The Court: Then, as I understand it, the assets were not sold at all, just the stock owned by the Agency Company?

Mr. Cooper: Technically; yes, sir.

The Court: For $11,000.00. That is all that Mr. Chappelle bought.

Mr. Cooper: Well, the decree, if Your Honor please, goes into that, (reading): "The receiver herein, C. S. Jobes, will sell at once, at private sale, to James Chappelle, trustee in trust for the purchasers of the stock of The Great Western Life Insurance Company at the upset price of eleven thousand dollars, and as the property and assets of The Great Western Agency Company the said 992 shares of the capital stock of the said The Great Western Life Insurance Company, subject however to the lien and equities in favor of the said National Bank of Commerce of Kansas City, Missouri, for the payment of the said $21,000.00; and both said receiver and said National Bank of Commerce, upon payment to them respectively of said sum shall promptly surrender and deliver to him, the said James Chappelle, trustee, all of the said capital stock held by them or either of them, and shall duly assign the same to the said James Chappelle, Trustee, and the said stock shall be by said Life Insurance Company at once properly transferred on the books of said Company to him, the said James Chappelle, Trustee." * * * "The said The Great Western Life Insurance Company, reorganized, has deposited as an additional sum for carrying out these orders and decree with the Commerce Trust Company, of Kansas City, Mo., one hundred and thirty thousand dollars ($130,000.00). And W. T. Kemper, an officer of that trust company, shall take credit on the books of said Company for said moneys, and at once pay out the same in accordance with this decree, and file herein receipts therefor, which said words 'at once' *is* hereby understood to mean within five days from the date hereof."

Then, there is a paragraph with reference to Mr. Sherman, who appeared there as an Annuity Certificate holder.

The Court: Now, what particular debts were to be satisfied out of that money?

Mr. Cooper: Here are the death claims that were approved and pending. They are not footed up here. Here is a list of them—leaving off the names—"$7,500.00, $2,500.00; $10,000.00; $1,000.00;"——

111 The Court (interrupting): Just give me the class.

Mr. Cooper: These were death claims.

The Court: Were death claims, alone, taken into consideration?

Mr. Cooper: No, sir;—"Claims for premiums on declined applications"—where the persons paid the premiums in advance and the applications were declined, aggregating, approximately, $5,000. "The claim of Hanna & Lupton (Kansas Loan Agreement), $7,500.00; and return to them their two notes aggregating $12,500.00." "And current bills and claims approximately aggreating $21,900.32. Subscriptions for proposed increase of capital stock, aggregating approximately, $91,415.12." "To the Illinois Life Insurance Company, account of re-insurance, $654.91. Accident claims, $11.43. Medical examiners' fees, $1,500.00. Balance due agents, $2,332.25."

The Court. Then, these certificate holders were not to be taken into consideration in the distribution of this fund at all?

Mr. Cooper: They were the people that were paying this money. It was provided that they could come in, as I have said; and failing to come in and participate in the payment of the debts, that they were forever barred.

The Court: Their debts would be satisfied if they refused to come in?

Mr. Cooper: Yes, sir. Now, as I say, these people were before the court, Mr. Sherman personally, and others were before the court; and Mr. Chappelle represented the majority of the certificate holders; and no appeal was taken from this decree, no exception was filed by anybody. The case stayed in the court until in October, 1912, for a period of about four years thereafter; and there was never a suggestion on the part of anyone complaining in reference to that decree. The class was represented there; and we say it was res adjudicata, whether it was right or wrong.

The Court: This thought impresses me, in that same connection. Why couldn't the court have eliminated the death claims just as well, on the same basis?

Mr. Cooper: Of course, the court could have done this with reference to the death claims, if a death claimant refused to come in and prove up his claim, under the formal order, he would be thereby barred.

The Court: Suppose a death claimant would refuse to stand an assessment on his claim, then could the court bar his claim?

Mr. Cooper: Only as I said, he could be treated as a creditor; and if he didn't come in and file his claim and participate and assist, he would be barred.

The Court: Now, were these certificate holders given an opportunity to file their claims?

Mr. Cooper: Yes, sir; they were.

The Court: In what way?

Mr. Cooper: By participation in this re-organization. As I said awhile ago, the matter was referred generally to Judge
112 Hall, and he published notice for everybody to come in and file their claims.

The Court: All the creditors.

Mr. Cooper: As I said before, if these parties were creditors, this matter is res adjudicata.

Mr. Neel calls my attention to this fact. Preliminary to this decree, and while the plan was being consummated, Mr. Chappelle and Mr. McBride, who is here, were in conference with these people trying to effect the reorganization; and after the decree was entered in August, 1908, they had it printed, together with the opinion which Judge McPherson handed down concurrently, and sent that out to the Annuity Certificate holders, as that they might take advantage of the twenty days. Some of them came in after that time, but these people stayed out. So they had not only the constructive notice of publication, but the class was substantially represented, and Mr. Sherman was in court personally and participated in the benefits of the decree himself. The decree gave him some relief, which he took, and he accepted it. They didn't accept nor appeal. Then, afterwards, after the decree was rendered, in order that they should have actual notice in addition to the conference that was going on before, a copy of the decree was sent out to the certificate holders of the Agency Company and the stockholders as well, and during that twenty days some came in, and these stayed out.

Now, Mr. Sherman is saying that he is the owner of these certificates, not as trustee of an express trust. There is nothing to show here when he acquired them. Of course, when ever he acquired them, having been in the case in person, and having accepted the benefits of the decree, he knew absolutely of everything that had taken place in the case to which he was a party. The stipulation on file, provides that he sues as owner, and the stipulation provides that he is the owner.

Now, in October, 1912, this order was made. This is the last order in the case:

"Now on this 14th day of October, 1912, the defendant, The Great Western Life Insurance Company, appearing by James W. Orr, its attorney, represented to the court that heretofore and on the 27th day of August, 1908, before the Honorable Judge McPherson, Judge, decree and orders were entered in the above entitled cause finally disposing of all matters and things involved and then before the court, and in said decree it was provided, viz.: 'It is further ordered and decreed that the jurisdiction of this court is fully retained, extended and continued from time to time until this cause is finally concluded over all subjects—matter covered by any pleading now on file or that later on may be filed, and over all parties whose names are now on the record and such other party or parties as may later be brought into court or who may come into

court by any pleading. And all such parties now to the record and including The Great Western Life Insurance Company, and all parties who may later on be made parties herein, shall be
113 bound by such further orders and decrees as to the court may seem necessary or proper. All of which are ordered of record this August 27th, 1908.' And it being made to appear to the satisfaction of the court that this cause is finally concluded over all subjects—matter covered by any pleading then or since filed in said cause and that all parties then or thereafter being brought to said court in said cause have been heard, and the matters disposed of and that it is no longer necessary or important to continue or retain jurisdiction of said cause. It is by the court ordered and decreed that further jurisdiction of this court over said cause or any of the matters relating thereto or involved therein be and the same is hereby withdrawn and discontinued, and this court hereby relinquishes further jurisdiction of this cause or of the subject matter thereof.

(Signed) SMITH McPHERSON,
Judge.'

That was four years and two months after the original decree was made. I think that covers the situation. Of course, it is our contention that the court had jurisdiction, had the right to do what it did do. If it was wrong, it cannot be collaterally attacked, the parties being before the court.

The Court: Your theory is that the court can wipe out subsequent obligations of the Company in this contract, as well as those already existing?

Mr. Cooper: Yes, sir.

The Court: And, particularly such indebtedness as had already accrued at the time?

Mr. Cooper: Yes, sir. Mr. Neel has suggested a matter. These Annuity Certificates occupy rather a unique position, not only in the case here, but as a matter of insurance law. They provide that the holders of the certificate should participate in the income of the Company, in a fund to be created, in a class of five hundred, on the basis of twenty-five cent payments collected on each $1,000.00 of insurance written by the Company, except re-insurance, and most of them that were afterwards issued, many of those are in the case here, and the annuity due them upon the investment was payable out of the earnings of the Company. It will appear in the record that the Superintendent of Insurance of Missouri had taken the position that those were not annuity contracts at all, and beyond the power of the Insurance Company to issue them; and they were therefore modified—as far as they were modified—most of them by consent of the parties, so that this annuity would be payable out of the earnings of the Company, the theory then being that they could only affect the rights of the stockholders, who otherwise would be paid in dividends. That was a matter which Judge Thomson here, and myself, took into consideration.

The Court: They were not, then, upon the same basis as the ordinary life policy holders?

Mr. Cooper: No, they are more, now, in the nature of preferred stock holders. This is not an annuity certificate, as such, at all; and it was urged by many people, that this was not a proper document for the Life Insurance Company to issue. The word "annuity" there as used, as stated, was mis-applied; the other name of
114 it, namely an investment certificate, being closer to the real fact. In other words, that proposition was taken into consideration. Judge McPherson, in his opinion, while he does not hold them void as a matter of fact, passes that question over because of this re-organization. I think when Your Honor reads his opinion, you will see that he thinks that these certificates were all void anyhow. In which event, the most that could be said for them, would be that they were creditors to recover back the money which they paid in; in which event the publication which was given by Judge Hall as effectually barred them as it would a creditor for merchandise.

The Court: Anyway, you are treating them in the nature of bonds and notes, payable annually?

Mr. Cooper: Of course, Your Honor, this is a suit here to recover back the purchase money. This is not a suit on the contract; this is a suit to recover back the money paid in.

The Court: I understand. But, as affected by this order of the court requiring them to present their claims within a certain time, you are treating them as a bond or note payable in installments?

Mr. Cooper: Yes, sir.

The Court: Entirely different than life insurance?

Mr. Neel: You could change that name, and call them Investment Certificates. Where you find the language "annuity" or "Investment" Certificates, it is referring to these same certificates.

The Court: All right.

Mr. Landon: If the court please, I think we set up in the reply that Mr. Sherman was no authorized to represent any of these parties before the court, as holders of the Annuity Certificates; therefore, that none of these parties were parties to that suit in the Federal Court, nor made parties in any shape or form. A copy of this decree was sent out a week or ten days after it was made.

The Court: Now, treating these for the sake of argument as a bond or note payable in installments: Was it necessary that they should be made parties therein, any more than any other creditor?

Mr. Landon: Yes, in order to foreclose and protect their interest, it is necessary that they should be made parties.

The Court: Do you think it is necessary for a bond holder or an annuity holder to be barred out, when they are notified to present their claim within a certain time?

Mr. Landon: Yes, sir. And they were not given an opportunity in this decree to come in and present their claim or show cause.

The Court: Now, in this notice to present claims and have them allowed against the Company——

Mr. Landon (interrupting): They were certain claims.

The Court: Were they specifically provided for in that notice?

Mr. Landon: No, sir; I don't think they were covered
115 all. That is the reason why I call special attention to the fact that there was nothing due upon these certificates until the 31st of January, 1909. It was over six months after this decree was made. The first dividend, the first annuity of eight per cent, had been paid long prior to the receivership, and these Annuity Certificate holders participated, alone in the premiums that had been written by the Company, that is, a certain proportion of a certain per cent. That is, in the per cent that came to the holders of these Annuity and Investment Certificates, was based alone upon the insurance that was written. That was the money out of which their money was to be paid, and not out of any assets of the Company at all.

The Court: These claims were not susceptible of proof?

Mr. Landon: No, sir. There was nothing due then. And, if the Company had been wiped out entirely and had not been able to continue business as a life insurance company, had absolutely ceased doing business at that time, had written no insurance, then they would have lost absolutely everything they put in, because it was contingent only upon the amount of a certain proportion of the premium that the Company received from the writing of insurance, and nothing else. Now, that is this contract. I don't think the question at this time as to whether or not they are void or ultra vires, is here. It isn't raised in the pleadings at all. That is the proposition. Now then, I want to call attention to the fact again, that after this decree in August, 1908, and in the fall of 1912, the International Life Insurance Company, by a signed contract, agreed to continue these contracts, or to pay back to the holders the amount that they had paid for these certificates.

The Court: Just repeat that, if you please.

Mr. Landon: The contract between the International Life Insurance Company and The Great Western Life Insurance Company, the merger contract, plus the agreement with the Insurance Commissioner, the Superintendent of Insurance of this State.

The Court: I understand it.

Mr. Landon: Provides that if it was determined that these certificates were valid obligations of The Great Western Life Insurance Company, that the International Life Insurance Company would pay and undertake to pay to the holders the amount that they had paid in, less what they had received as dividends; or, if they elected to do so, that they might continue the contracts in force and continue to pay. That is, they had the right to elect so to do, in the event that the one suit, which they said should be brought, should determine that they were valid subsisting obligations to pay.

Now, I think that is all. There wasn't any sale made. There wasn't any question of the assets of the Company being disposed of or sold in this receivership, at all. It only had to do with a few of the obligations. It didn't appear what the assets of the Company were. They weren't considered at all. The Company went in as The Great Western Life Insurance Company, in the hands of the receiver; and, all that was done was to kick out one batch of
116 directors and put another batch in; and, they went out the same door as they went in, The Great Western Life Insurance

Company, continuing business thereafter until this consolidation. That is all.

The Court: Proceed.

Mr. Landon: Now, I desire at this time, so as to eliminate any confusion—There are several of the counts based upon certificates that were surrendered; and, I desire to eliminate those at this time. That is the 2nd Count, based upon the certificate of A. F. Derury.

Mr. Neel (interrupting): You are dismissing that count, are you?

Mr. Landon: Yes, sir. And the 4th Count; and the 5th Count; the 13th Count; the 14th Count; the 16th Count; the 18th Count; the 79th Count; the 80th Count; the 81st Count; the 82nd Count; the 83rd Count; the 84th Count; the 85th Count; the 86th Count; the 87th Count; the 88th Count; the 89th Count; the 90th Count; the 91st Count; the 92nd Count; the 93rd Count; the 94th Count; the 95th Count; the 96th Count; and the 97th Count.

Mr. Neel: As I understand it, you are dismissing those because the parties participated in the re-organization?

Mr. Landon: Yes, sir. Now, I simply want to dismiss all of those counts that I have mentioned.

Mr. Neel: Mr. Landon, didn't I understand you to say that you dismissed those because those parties participated in the reorganization?

Mr. Landon: Yes. I said I wanted to dismiss them.

Mr. Hill: You don't know whether they did or not.

Mr. Landon: I just dismiss as to those counts.

The Court: I presume that this entire controversy centers around that notice?

Mr. Landon: And the decree, which they set up in their answer.

The Court: Now, if this notice was sufficient to bring in your clients, and they failed to file their claims, of course, they have no interest in this suit.

Mr. Landon: I want to get the formal proof in; and, let us get——

Mr. Cooper (interrupting): The defendant objects to the introduction of any testimony under the petition, for the reason that the petition or amended petition does not state facts sufficient to constitute a cause of action; and, that under the pleadings the defendant is entitled to a judgment, for which it prays. When I said "Petition," I referred to the amended petition upon which the case is being tried.

The Court: Overruled.

To which ruling and action of the court the defendant by its counsel then and there duly excepted.

Mr. Landon (presenting certificates covering the different counts): I want to offer in evidence these certificates.

117 Mr. Cooper: What certificates are you offering now?

Mr. Landon: They are arranged here according to the different counts. Do you want to save the length of the record by having one or two of these cover the whole thing?

Mr. Cooper: Yes, we can arrange for that when the record comes up. Just offer them all now.

Mr. Landon: All right. I offer in evidence the certificates as described in the 1st Count, the 23rd Count, the 24th Count, the 25th Count, the 26th Count, the 27th Count, the 28th Count, the 29th Count, the 30th Count, the 31st Count, the 32nd Count, the 33rd Count, the 34th Count, the 35th Count, the 36th Count, the 37th Count, the 38th Count, the 39th Count, the 40th Count, the 41st Count, the 42nd Count, the 43rd Count, the 44th Count, the 45th Count, the 46th Count, the 47th Count, the 48th Count, the 49th Count, the 50th Count, the 51st Count, the 52nd Count, the 53rd Count, the 54th Count, the 55th Count, the 56th Count, the 57th Count, the 58th Count, the 59th Count, the 60th Count, the 61st Count, the 62nd Count, the 63rd Count, the 64th Count, the 65th Count, the 66th Count, the 67th Count, the 68th Count, the 69th Count, the 70th Count, the 71st Count, the 72nd Count, the 73rd Count, the 74th Count, the 75th Count, the 76th Count, the 78th Count, the 100th Count, the 101st Count, the 103rd Count, the 106th Count, the 107th Count, the 108th Count, the 109th Count, the 110th Count, the 111th Count, and the 112th Count. There are a few that we haven't the certificates for.

The Court: I wish you would furnish me a list of these, then.

Said certificates so offered in evidence, are in the words and figures following, to-wit:

Stipulation.

It is hereby stipulated and agreed by and between parties plaintiff and parties defendant, by their respective attorneys, that it shall not be necessary to copy in full all of the said certificates here offered in evidence in this Bill of Exceptions, for the following reasons: That all of said certificates, denominated "Annuity Certificates," covering Count One to Count One Hundred and Five, both inclusive, of the petition are all issued on a lithograph form; and said certificates, denominated "Investment Certificate," covering Count One Hundred and Six to Count One Hundred and Twelve, both inclusive, of the petition are all issued on a lithograph form, therefore, the only difference in said certificates, so respectively denominated, is the certificate number, number of shares, amount, to whom issued, date of issue, and the assignment on the back thereof.

Therefore, Annuity Certificate No. 391, issued to John Kesl, and covering the First Count of the Petition, is here copied in full; and following immediately thereafter is to be a tabulation showing the count of the petition, number of certificate, number of shares, amount, to whom issued, date of issue, and the assignment on the back thereof; and Investment Certificate No. 49, issued to
118 S. D. Moherman, and covering Count One Hundred and Six of the Petition, is here copied in full, and following immediately thereafter a like tabulation showing the number of certificates, number of shares, amount, to whom issued, date of issue, and the assignment on the back thereof.

It is, however, further stipulated and agreed that the origina certificates here offered in evidence shall be produced at the hearin and argument of this cause in the Supreme Court of Missouri, o elsewhere, and that they may be presented, considered and use with the same force and effect as though completely copied in th Bill of Exceptions, and all objections are hereby expressly waived.

THAD B. LANDON,
Attorneys for Plaintiff.
COOPER, NEEL & WRIGHT,
Attorneys for Defendant.

"United States of America."

(Design Here.)

The Great Western Life Insurance Co., Kansas City, Mo.

No. 391. Shares, One. $150.00.

Annuity Certificate.

Whereas, The Great Western Life Insurance Company (here inafter called the Company,) is desirous of qualifying for the writin of Life Insurance in a number of states, to the end that a larg volume of business may be quickly and economically produced, an

Whereas, The Company is authorized by its Charter to carry on the business of Insurance upon the lives of individuals, and ever insurance pertaining thereto or connected therewith, and to gran purchase and dispose of annuities and endowments of every kind an description, and is specifically authorized, by Resolution of its Boar of Directors, to dispose of annuities in the various States in which it desires to write Life Insurance, upon the basis, at par, of On Hundred and Fifty ($150.00) Dollars per share, and

Whereas, John Kesl has paid the Company for One of said share the sum of one hundred fifty dollars.

Now, therefore, In consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof, an annuity during his life, and thereafter to his heirs or personal representatives of one shares of the proceeds of twenty-five cents per one thousand dollars of all insurance, except re-insurance, written by the Company in the United States for Fifty years from the date of its incorpora tion, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows to-wit:

I. The aggregate of twenty-five cents per one thousand dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by five hundred; the quotient obtained shall be the apportionment of each of said shares, and the

119 total of one shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The Company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the Company herefor, as stated above.

III. This Certificate is assignable in writing and transferable only on the books of the Company, in person or by attorney, upon presentation of this certificate at the Home Office of the Company. The Great Western Life Insurance.

In Witness Whereof, The Great Western Life Insurance Company has caused this Certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 5th day of August, 1907.

O. L. VAN LANINGHAM,
President.

Attest:

[Company Seal, Kansas City, Mo.]

E. L. BIERSMITH,
Secretary."

(Back or Reverse Side of Certificate:)

"*Assignment.*

For value received, I hereby sell, assign and transfer unto —— —— the within certificate and the shares represented thereby, and hereby constitute the present Secretary of The Great Western Life Insurance Company as my agent and attorney in fact to transfer the same on the books of the Company.

Witness my hand this — day of ——, 19—.

—— ——.

Witness:

—— ——.

Certificate of Transfer.

The Great Western Life Insurance Company hereby acknowledges the assignment of the within certificate and the shares represented thereby to —— —— and has transferred the same upon the books of the Company accordingly.

THE GREAT WESTERN LIFE INSURANCE COMPANY,

By —— ——,
Secretary.

(Further assignments hereof may be made in accordance with above forms, and attached hereto.)

The Great Western Life Insurance Co., Kansas City, Mo., Annuity Certificate, John Kesl, Town, Cuba; County, Republic; State, Kansas."

Annuity Certificates.

Count of petition.	Certificate No.	Number of shares.	Amount.	To whom issued.	Date issued.	To whom assigned.

120 "United States of America.

(Here Appears Design.)

The Great Western Life Insurance Co., Kansas City, Mo.

No. 49 Certificates, Ten $1,500.

Annuity Investment Certificate.

Whereas, The Great Western Life Insurance Company is desirous of qualifying for the writing of life insurance in a number of States, simultaneously, to the end that a large volume of business may be quickly and economically produced, and,

Whereas, the said The Great Western Life Insurance Company is authorized by its Board of Directors to issue to selected persons in the various States in which said Company desires to write Life Insurance, a total of Five Hundred (500) Investment Certificates or Shares of the par value of One Hundred Fifty Dollars ($150.00) each:

Therefore, in consideration of the payment by S. D. Moherman of fifteen hundred dollars for ten of said Investment Certificates, the receipt of which is hereby acknowledged, the said The Great Western Life Insurance Co. hereby agrees to apportion and pay to said S. D. Moherman, an annual dividend on such Certificates during his life and thereafter to his heirs or assigns, consisting of ten shares of the proceeds of Twenty-five Cents ($.25) per One Thousand Dollars ($1,000) of all insurance, except reinsurance, written by said Company in the United States for fifty years from the date of its incorporation, on which premiums, computed on the annual basis, have been received in cash, and also for so long thereafter as premiums are received on said insurance; said dividend to be determined as follows:

I. The total sum of said Twenty-five Cents (.25) per One Thousand Dollars ($1,000) of insurance shall be ascertained at the end of each calendar year, and such sum divided by the number of shares issued; the quotient obtained shall be the apportionment to each of such shares, and the total sum of ten shares shall be the dividend payable hereunder, within thirty days thereafter.

II. The number of these Certificates or Shares issued shall not exceed Five Hundred (500).

III. In the event of the death of said S. D. Moherman, the dividend hereunder shall be paid to his heirs or assigns.

IV. This Certificate is transferable only on the books of the Company in person or by attorney, on surrender of this Certificate.

The Company guarantees that the first annual dividend on this certificate shall not be less than eight per cent (8%) on the par value.

121 In Witness Whereof, The Great Western Life Insurance Company has caused this certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 31st day of May A. D., 1907.

[Seal The Great Western Life Insurance Company, Kansas City, Mo.]

O. L. VAN LANINGHAM,
President.

E. L. BIERSMITH,
Secretary."

On the back or reverse side thereof appears the following: "The Great Western Life Insurance Co., Kansas City, Mo., Investment Certificate, S. D. Moherman; Town, Wellsville; County, Franklin; State, Kansas; Union Bank Note Co., K. C. Mo.; Form 980-4-07."

Investment Certificates.

Count of petition.	Certificate No.	Number of shares.	Amount.	To whom issued.	Date issued.	To whom assigned.

Mr. Landon: I introduce in evidence of this Stipulation, Paragraphs "1," "2" and "4."

Mr. Neel: Why don't you put it all in?

Mr. Landon: The other paragraphs don't apply to my part of the case. I am introducing, specifically, Paragraphs "1," "2" and "4."

The Court: You can offer it all, if you wish, Mr. Neel.

Mr. Cooper: We offer the balance of the stipulation, the other paragraphs.

Said stipulation so offered in evidence, was marked Exhibit "1," and is in the words and figures following, to-wit:

EXHIBIT "1."

"In the Circuit Court of Jackson County, Missouri, at Kansas City, November Term, 1917.

No. 75591.

ADRIAN F. SHERMAN, Plaintiff,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY, Defendant.

Stipulation.

It is admitted by the parties hereto as follows:

(1) Such of the certificates (hereinafter called annuity certificates) mentioned and described in the various counts of plaintiff's second amended petition as are shown on the list hereto attached marked 'Exhibit A' and made a part hereof, were executed and delivered to the respective parties named therein by the Great Western Life Insurance Company (hereinafter called the Insurance Company) and each of the parties so named paid to the Insurance Company therefor the amounts mentioned in each of the certificates respectively, as shown by the attached list.

(2) The insurance Company paid to the holders of the annuity certificates the first annuity or dividend of Eight (8%) per cent when due by their terms, but thereafter no further payments whatsoever were made thereon or thereunder.

122 (3) By mutual consent of the Insurance Company and the respective holders thereof some of the annuity certificates were amended in such form as to make the dividends or annuities thereon and thereunder payable only out of the net earnings of the Insurance Company.

(4) Heretofore and prior to the institution of this suit the holders of the annuity certificates shown on the attached list assigned the same to the plaintiff, who thereupon became and has continued to be the owner and holder thereof.

(5) A large number of the anuuity certificates issued by the Insurance Company other than the ones shown on the attached list were surrendered by the holders thereof and canceled pursuant to the decree of the United States Circuit Court for the Western Division of the Western District of Missouri in the case referred to in the amended answer herein, such holders participating in and complying with the decree referred to in said answer; that the annuity certificates so surrendered and canceled were identical with those sued on by plaintiff in this case except as to the names of the hold-

ers thereof and the dates and amounts thereof and amounted to approximately one-half of those issued by the Insurance Company.

(Signed) SHERMAN & LANDON,
Attorneys for Plaintiff.
(Signed) LESLIE LYONS.
(Signed) HADLEY, COOPER, NEEL & WRIGHT,
Attorneys for Defendant.

EXHIBIT 'A.'

List of Certificates in Our Possession.

	Number.	Name.	Shares.
	1	John Kesl,	1
	23	Gertrude Pendleton,	1
	24	William A. Austin,	2
	25	W. P. Burroughs,	2
	26	O. G. Hinshaw,	5
	27	W. H. Hinshaw,	5
	28	William W. Miller,	5
	29	W. B. Smith,	5
	30	John Whitehurst,	1
	31	Arthur Capper,	2
	32	Charles Curtis,	4
	33	James Ball,	1
	34	I. W. Baughman,	3
	35	Fred Bonebrake,	3
	36	E. R. Bolton,	8
	37	E. R. Bolton,	7
	38	Flora B. Cameron,	7
	39	Flora B. Cameron,	8
	40	W. W. Cameron,	5
	41	W. W. Cameron,	10
	42	R. D. Carpenter,	3
123	43	Anna R. Carpenter,	3
	44	Paul E. Coyle,	1
	45	Robert Craig,	5
	46	Garrett Elliott,	10
	47	W. T. Embree,	2
	48	Mary Gerber,	2
	49	John Goering,	2
	50	Joseph Goering,	5
	51	C. H. Goering,	5
	52	R. A. Goerz,	2
	53	William Hart,	10
	54	L. T. Hussey,	2
	55	E. J. Krause,	1
	56	C. H. Krause,	1
	57	Louis W. Jones,	5

Number.	Name.	Shares.
58	F. S. Larrabee,	5
59	F. S. Larrabee,	5
60	C. H. Lee,	1
61	Evan J. Morgan,	5
62	C. T. Nissen,	2
63	S. W. Nassaman,	10
64	J. S. Regier,	2
65	J. N. Rose,	1
66	J. N. Rose,	1
67	Joseph Rowell,	2
68	A. F. Schaub,	1
69	R. S. Thompson,	2
70	E. G. Van Ness,	2
71	Theodore P. Walton,	2
72	Cora J. Wells,	1
73	J. T. Lafferty,	3
74	Hugh J. Smith,	5
75	C. R. Wilkins,	1
76	Edward P. Pendleton,	5
98	E. W. Hoch,	1
100	Daisy E. Cayot,	8
101	William Kesl,	1
103	John Linn,	2
106	S. D. Moherman,	8
107	J. S. McClintoch,	1
108	Robert T. Fox,	1
109	E. W. Hoch,	1
110	John L. Stratton,	1
111	C. A. Smith,	8
112	Georgia Kibler,	1"

Mr. Landon: I offer in evidence Exhibit "2," being a letter wr
ten by Adrian F. Sherman to the International Life Insurance Co
pany, dated February 22nd, 1913.

124 Said letter so offered was marked Exhibit "2", read in e
dence, and is in the words and figures following, to-wit:

EXHIBIT "2."

2/22/13.

"International Life Insurance Company,
St. Louis, Mo.

GENTLEMEN:

As attorney for those persons, a list of whose names are here
attached and made a part hereof, each and every of whom are t
owners and holders of certain so-called annuity or investment certi
cates issued by the Great Western Life Insurance Company of Ka
sas City Missouri, I hereby demand the performance of said contra

by said International Life Insurance Company, and the payment of each annuity due under such certificates.

As attorney for each and every of such persons, I hereby advise you that unless the terms of said so-called annuity or investment certificates are full and completely complied with, according to the terms thereof, by said International Life Insurance Company, or on before the seventh day of March, 1913, you are to consider this as a notice that each and every of such owners and holders of said so-called annuity or investment certificates, rescind and cancel each and every of said certificates, and demand the return of all moneys paid by each and every of them to the Great Western Life Insurance Company, thereon, less whatever sum or sums may have been paid to them or any of them, upon said certificates.

As attorney for each and every of said persons, I also hereby advise you that unless the demand for the return of said money is complied with on or before the eleventh day of March, 1913, that suit will be instituted to enforce the rights of my clients.

Yours very truly,

(Signed) ADRIAN F. SHERMAN."

AFS:BMB.

Mr. Landon: The list referred to in this letter, Exhibit "2", is—Well, I will just offer the list in evidence.

Mr. Cooper: The letter refers to a list of the certificate holders?

Mr. Landon: Yes, sir.

Mr. Cooper: That list covers all the persons mentioned in the Amended Petition?

Mr. Landon: Yes, sir.

Mr. Cooper: Including those as to whom you had dismissed?

Mr. Landon: Yes.

Said list so offered in evidence, is in the words and figures following, to-wit:

"*List of Annuity or Investment Certificates Issued by the Great Western Life Insurance Company.*

125

	Name.	No. of shares.
1	A. F. Deruy,	5
3	Cleveland Sewall,	2
4	W. T. Grove,	10
5	Mrs. Louisa Dittemore,	1
6	Robert M. Forbes,	10
7	H. C. Bowman,	2
8, 9, 10, 11 & 12	G. J. Kumpf and family,	20
13	J. A. Schrey,	1
14	Joseph Imthrum,	2
15	F. L. Pothast,	2
16	J. C. Fear,	6
17	J. F. Mathis,	10

		Name.	No. of shares.
	18	W. H. Mathis,	5
	19	Ray Taylor,	2
	20	S. M. Bridgeman,	2
	21	B. F. McLean,	10
	22	S. B. Amidon,	5
	23	Gertrude Pendleton,	1
	24	William A. Austin,	2
	25	W. P. Burrows,	2
	26	O. G. Hinshaw,	5
	27	W. H. Hinshaw,	5
	28	William W. Miller,	5
	29	W. D. Smith,	5
	30	John Whitehurst,	1
	31	Arthur Capper,	2
	32	Charles Curtis,	4
	33	James Ball,	1
	34	I. W. Baughman,	5
	35	Fred Bonebrake,	4
	36 & 37	E. R. Bolton,	15
	38	Mrs. Flora Cameron,	15
	39, 40 & 41	W. W. Cameron,	15
	42	R. D. Carpenter,	3
	43	Annie R. Carpenter,	3
	44	Paul E. Coil,	1
	45	Robert Craig,	5
	46	Garnett Elliot,	10
	47	W. T. Embree,	2
	48	Mary Gerber,	2
	49	John C. Goering,	5
	50	Joseph C. Goering,	5
	51	C. H. Goering,	5
	52	R. A. Goerz,	2
	53	William Hart,	10
	98	E. W. Hoch,	1
	54	L. T. Hussey,	2
	55	E. J. Krause,	1
	56	C. H. Krause,	1
126	57	Louis W. Jones,	5
	58	F. S. Larrabee,	5
	59	F. D. Larrabee,	5
	60	C. G. Lee,	1
	107	J. C. McClintock,	1
	61	Even J. Morgan,	5
	62	C. T. Nisson,	2
	63	S. W. Nassaman,	10
	64	J. G. Reiger,	2
	65 & 66	J. N. Rose,	2
	67	Joseph Rowell,	2
	68	A. F. Schaub,	1

	Name.	No. of shares.
110	John L. Stratton,	1
69	R. S. Thompson,	2
70	E. G. Van Ness,	2
71	T. P. Walton,	2
72	Cora Wells,	1
73	J. T. Lafferty,	3
108	R. T. Fox,	1
74	H. J. Smith,	5
75	C. R. Wilkins,	1
76	E. T. Pendleton,	5
106	S. D. Mohrman,	10
111	C. A. Smith,	10
112	Georgie Kibler,	1
77	S. E. Hunt,	1
78	F. E. Cayot,	5
79	John C. Nicholson,	1
80	S. Lehman,	10
81	C. Lehman,	10
82	C. F. Claassen,	4
83	A. B. Gilbert,	10
84	W. E. Grove,	2
24	Wm. A. Austin,	2
85	C. E. Finley,	5
86	H H Wiggans,	10
87	C. L. Davis,	5
88	A. E. Smolt,	10
89	W. G. Cheney,	3
90	L. C. Horst,	2
91	S. M. Swartz,	5
92	H. E. Suderman,	1
93	P. M. Hoisington,	2
94	F. D. Kaufman,	2
95	C. E. Stephens,	5
96	Early Carder,	5
97	F. S. Hurd,	2"

(Paper here marked Exhibit "3," for identification.)

Mr. Landon: I now offer in evidence Exhibit "3".

127 Said paper so offered, marked Exhibit "3", was here read in evidence, and is in the words and figures following, to-wit:

EXHIBIT "3."

"International Life, St. Louis, Massey Wilson, President.

International Life Insurance Company.

St. Louis, Missouri.

Massey Wilson, President.
J. L. Babler, Vice Prest.
J. P. Hinton, Vice Prest.
S. W. Jurden, Treasurer.
W. F. Grantges, Secy.

February 26, 1913.

Mr. Adrian F. Sherman,
#301 New York Life Bldg.,
Kansas City, Missouri.

DEAR SIR:

We have your favor of the 22nd inst., concerning certain annui certificates issued by the Great Western Life Insurance Compan Your letter will be submitted to the Board of Directors at its ne meeting, and you will be advised. The Board will not meet, ho ever, until Wednesday, March 12th.

Yours very truly,

(Signed) MASSEY WILSON,
President.

(In pen:) Great Western File."

(Paper here marked Exhibit "4", for identification.)

Mr. Landon. I now offer in evidence Exhibit "4",—the Merg Agreement between The Great Western Life Insurance Compa and the International Life Insurance Company, The particular p tions of this agreement as are set forth in the reply, is Article 3 the Articles of Consolidation.

Said paper so offered in evidence, marked Exhibit "4", is in t words and figures following, to-wit:

EXHIBIT "4."

"State of Missouri Insurance Department.

I, Frank Blake, Superintendent of the Insurance Department the State of Missouri, do hereby certify that a Commission provid for by section 6936 of the Revised Statutes of the State of Missou of 1909, as amended by the Act approved April 17, 191
128 and composed of the Honorable Ike S. Lewis, Insurance S perintendent of the State of Kansas, the Honorable B. Gill, Commissioner of Insurance and Banking of the State of Texa

nd the undersigned, as Superintendent of the Insurance Depart-ent of the State of Missouri, did on December 7, 1912, approve e consolidation of the Great Western Life Insurance Company ith the International Life Insurance Company, in accordance with e findings and order of said commission, which are hereunto an-exed, and that the charter of the International Life Insurance Com-any, hereunto annexed, consisting of the former charter of the Great merican Life Insurance Company and of the International Life nsurance Company, as they originally existed, and Articles of greement and Consolidation between said companies, modified and pproved August 17, 1909, by a Commission organized and acting nder section 7889 of the Revised Statutes of Missouri of 1909, hich said Charter of said so formed International Life Insurance ompany, as further modified, as set forth in the annexed findings nd order of said commission, dated December 7th, 1912, has been uly adopted as the Charter of the International Life Insurance ompany.

In testimony whereof, I have hereunto set my hand and caused to be hereto affixed the official seal of said Insurance Department, his 10th day of December, A. D. 1912.

[L. S.] FRANK BLAKE,
Superintendent of the Insurance Department of the State of Mo.

STATE OF MISSOURI,
County of Jackson, ss.

Before a commission composed of the undersigned, Frank Blake, Superintendent of Insurance of the State of Missouri, Ike S. Lewis, Superintendent of Insurance of the State of Kansas, and B. L. Gill, Commissioner of Insurance and Banking of the State of Texas, constituting a commission to hear the joint petition of the International Life Insurance Company and the Great Western Life Insurance Company for the approval of the contract of re-insurance and merger between the two companies entered into on the first day of October, 1912.

The International Life Insurance Company and The Great West-rn Life Insurance Company, heretofore and on October 1st, 1912, resented their joint petition to the Superintendent of the Insurance Department of the State of Missouri, setting forth the terms and onditions of a proposed contract of consolidation and reinsurance etween said companies, and praying for the approval or of any odification thereof which the commission provided for by law, ay approve. Said petition and said contract are as follows, to-wit:

129 STATE OF MISSOURI,
City of St. Louis, ss:

In re Consolidation of International Life Insurance Company
The Great Western Life Insurance Company.

To Hon. Frank Blake, Superintendent of the Insurance De
ment of the State of Missouri, Jefferson City, Missouri.

International Life Insurance Company and the Great Wes
Life Insurance Company, corporations organized and existing un
and by virtue of the laws of this State, respectively represent
they propose to enter into a contract and articles of agreement
consolidation with each other. Both of said companies are
stock companies, formed for the purpose of making assurance u
the lives of individuals and every assurance pertaining there
connected therewith, and to grant, purchase and dispose of
nuities and endowments of every kind and description whatso
and to provide an indemnity against death and for weekly
other periodic indemnity for disability occasioned by accident to
person of the insured. It is the purpose of the said Compa
under and by virtue of articles of consolidation and agreemen
merge into the International Life Insurance Company, one of
parties hereto, all of the property, assets, rights, franchises, privil
and immunities of The Great Western Life Insurance Company
other party hereto, and that the said International Life In
ance Company shall take over and reinsure all of the risks of
The Great Western Life Insurance Company. The terms and
ditions of the said consolidation are embodied in the articles of ag
ment and consolidation hereunto annexed, which said article
agreement and consolidation have been entered into by and betw
the Directors of said Companies, and have been submitted to
ratified by a majority in interest of the stockholders of each of
Companies at meetings of the stockholders of said Companies
spectively, duly called and held for that purpose. And the st
holders of each of said Companies have, by resolution approved
a majority of the stockholders in each, authorized the officers
directors of each of said Companies to execute and enter into
articles of agreement and consolidation, or such modification the
as may seem to the commission provided for by section 6936 of
Revised Statutes of Missouri, 1909, to be for the best interests of
policy holders and stockholders of said Companies. A copy of
articles of agreement and consolidation is hereunto annexed
marked 'Exhibit A.'

Wherefore, the undersigned petitioners pray that said propo
articles of agreement and consolidation, or such modification the
as may seem to the commission provided for by section 6936
the Revised Statutes of the State of Missouri, 1909, to be for
best interests of the policyholders and stockholders of said In

national Life Insurance Company and said The Great Western Life Insurance Company be approved, and your petitioners will ever pray, etc.

INTERNATIONAL LIFE INSURANCE COMPANY,
By MASSEY WILSON,
President.

Attest:

[Corporate Seal.]

W. F. GRANTGES,
Secretary.

THE GREAT WESTERN LIFE INSURANCE COMPANY,
By GEO. STIVENSON, JR.,
President.

Attest:

[Corporate Seal.]

W. F. GRANTGES,
Secretary.

ticles of Agreement and Consolidation Between International Life Insurance Company and The Great Western Life Insurance Company.

Articles of Agreement, made this sixteenth day of September, 1912, and between the International Life Insurance Company, herein-ter called the International, and The Great Western, both of which e corporations duly organized and existing under and by virtue the laws of the State of Missouri and as such are authorized to rry on a general life insurance business as provided by the laws of d State.

Witnesseth, that in consideration of the mutual execution of these ticles and of the grants, conveyances and covenants therein pro-led for, the said corporations do hereby convey, covenant and ree to and with each other as follows, to-wit:

Article I.

They do hereby severally agree to and with each other to unite and nsolidate, and they do hereby unite, form and consolidate their pective organizations, capital stocks, corporate and other fran-ses, rights, privileges and property of every nature, name and cription into one corporation, and the same are hereby merged o the International, one of the parties hereto.

Article II.

The Great Western does hereby grant, bargain, sell, convey, ass and transfer unto the said International all of its insurance bu ness together with the right to collect from the policy holders said The Great Western all premiums which now are or may he after become due by virtue of any contract of insurance ente into by said The Great Western, together with all goods and chatt bonds, bills, notes, accounts, demands, money, things in action, a all property and effects of every kind and description, wheresoe howsoever and by whomsoever held; and said The Great Weste does hereby agree that the same shall, from the date of the co summation of this agreement and the approval thereof as her after provided for, together with all the appurtenances thereu belonging, thenceforth be held, owned, possessed and controlled the International, the other party hereto, its successor and assig forever, as fully and completely as said The Great Weste
131 does or can now hold, own, use, possess, enjoy or control t same; and said the Great Western further agrees to exec and deliver to said the International all instruments of transfe assignment or other instruments proper or necessary to carry the purposes of this agreement. The Great Western further agr that immediately after the approval of this agreement by the tribu hereinafter referred to and the consummation of the agreement will surrender its offices to the International and deliver to the I ternational all books, documents, papers, records, instruments, a everything relating or in anywise appertaining to the business The Great Western or to the property or securities of the same, a said records, books and papers shall, when so delivered, be arran and indexed in an orderly manner.

Article III.

In consideration of the grant, conveyance and transfer above forth, the International does hereby agree to reinsure all insura contracts of The Great Western in the same manner and to the sa extent as the same should have been performed by The Great We ern, and the International does hereby assume and agree to p and discharge all valid debts, liabilities and obligations of The Gre Western, provided, that on the business of The Great Western kno as Special Income Contracts the International will annually app tion and pay to the holders of such contracts the amount apportio able and payable to them under their contracts only on the basis annual premium receipts from the business of said The Great We ern remaining in force from year to year; provided, further, th the holder of any such contract may at his option elect to receive lieu of such apportionment a sum equal to the amount apportion on his contract for the year 1912.

Article IV.

In consideration of the premises, the International does hereby rther agree to pay to each stockholder of The Great Western the m of $200.00 for each share of stock held by him, or a proportion- e part of said sum for each fractional share held by him, which m of $200.00 per share it is hereby agreed between the two com- anies constitutes the true and actual value of each share of stock The Great Western; or the International will, in lieu of said cash yment, issue to each stockholder of The Great Western three ares of the stock of the Internatonal of the par value of Twenty- ve dollars each for each share of stock of The Great Western held y him, or a proportionate part of said amount of stock for each ractional share of stock held in The Great Western. Said money said stock shall be paid to each stockholder of The Great Western pon surrender by him to the International of his stock in The Great estern for which said money is paid or for which said stock in the ternational is issued; and the stockholders of The Great Western shall have the right to elect whether they will take for their 32 stock in The Great Western money or stock in the Inter- national as above provided, and said election shall be made ithin thirty days from the date of the approval of this agreement y the tribunal provided by law for approving the same; and the nternational shall be given notice in writing within said period by ach stockholder of The Great Western as to his election to take tock or money, and in the event of failure of any stockholder of he Great Western to give said notice as above provided, he shall e held to have elected to take stock in the International for his tock in the Great Western in the proportion above set forth. Notice f such right of election by The Great Western stockholders shall e given by the International by depositing same in the Post-office ddressed to such stockholders as his address now appears on the ecord of The Great Western within five days after the approval f this agreement by said tribunal.

Article V.

The corporate name and charter of the International are hereby tained as the corporate name and charter of the consolidated cor- oration, and in order to meet the requirements of this merger, the ar value of the capital stock of the International is hereby reduced om Fifty Dollars ($50.00) to Twenty-five Dollars ($25.00) per iare, and the sum of Twenty-five Dollars ($25.00) per share on e entire capital stock of the International is hereby carried into e surplus of said International to be used as far as necessary for e purpose of making the payments herein provided for and for her purposes for which the surplus of the Company may be used. he number of shares of the International of the par value of venty-five Dollars ($25.00) shall be increased to such an amount

as the tribunal hereinafter referred to shall determine to be necess
to meet the purposes of this merger.

Article VI.

A sufficient sum of money shall be set aside out of the assets
the International to distribute to its stockholders, including th
who may become stockholders by virtue of this agreement, twe
per cent (12%) of the par value of Twenty-five Dollars ($25.0
a share being Three Dollars ($3.00) per share payable on or bef
the first day of January, 1913, as may be determined by the Boa
of Directors.

Article VII.

This agreement upon the part of both the parties hereto is ma
subject to approval of the tribunal provided by law of this State f
passing upon and determining the validity of reinsurance and co
solidation agreements of life insurance companies.

In Witness Whereof, both of the parties hereto have caused the
respective corporate names to be hereto affixed by their respecti
Presidents and their respective corporate seals to be hereun
133 affixed and attested by their respective Secretaries this si
teenth day of September A. D. 1912.

INTERNATIONAL LIFE INSURANCE COMPANY,
By MASSEY WILSON,
President.

Attest:
W. F. GRANTGES,
Secretary.

THE GREAT WESTERN LIFE INSURANCE COMPANY,
By GEO. STEVENSON, JR.,
President.

Attest:
GEO. R. HALL,
Secretary.

The Superintendent of the Insurance Department of the State of Missouri, having thereupon issued an order of notice, requiring notice to be given to the policy holders and stockholders of both companies of the pendency of such petition and the time and place at which the same would be heard, said order having been issued on the twenty-third day of October, 1912, and said order requiring the publication of said order of notice in two daily newspapers, designated in the said order by the said Superintendent, one of which papers was the St. Louis Globe Democrat, published in the city of St. Louis, State of Missouri, and the other of which was the Kansas City Star, published in the city of Kansas City, State of Missouri,

and said order having further required that further notice of the pendency of said petition should be given to each of the stockholders of The Great Western Life Insurance Company and to each of the holders of policies of The Great Western Life Insurance Company known as Special Income Policies, by mailing copy of said order of notice to the said stockholders and policyholders of The Great Western Life Insurance Company, prior to November 4th, 1912; and the Superintendent of Insurance of the State of Missouri having requested the assistance of Insurance Commissioners or Superintendents of Insurance of two other states as experts, who, with the Superintendent of the Insurance Department of this state, should form a commission to hear said petition, and the Hon. Ike S. Lewis, Superintendent of Insurance of the State of Kansas, and the Hon. B. L. Gill, Commissioner of Insurance and Banking of the State of Texas, having been so requested by the Superintendent of the Insurance Department of this state, and having so formed a commission to hear said petition in connection with the Superintendent of the Insurance Department of this state, and said petition coming on to be heard before said commission at the time and place fixed in said notice: to wit, the city of St. Louis, State of Missouri, at the offices of the International Life Insurance Company in said city and state on the eleventh day of November, 1912, and said hearing having been adjourned by said commission to the offices of The Great Western Life Insurance Company in the city of Kansas City, State of Missouri, on the twenty-fifth day of November, 1912, and said hearing having been further adjourned to the twenty-sixth day of November, 1912, at the time and place last aforesaid, and having been regularly further adjourned from time to time to this date;

and the said commission having made such examination into
134 the condition and affairs of said companies as it deemed proper, and having heard the evidence offered for and against the approval of said contract of consolidation and merger, and it appearing to the commission that notice of pendency of said petition has been given to the policyholders and stockholders of both of said companies, in accordance with the requirements of the order of notice, both by publication and by mail as required in said order, heretofore referred to, and it further appearing that said contract of reinsurance and merger has been approved by the directors of both of said companies and by the stockholders of both of said companies holding more than two-thirds in amount of the capital stock of each of the said companies, in meetings of said stockholders and directors, duly called and held for the purpose of considering said contract of consolidation and merger, and it further appearing that the interest of the policy holders of both of said companies is properly protected in said contract, and that no reasonable objection exists thereto, said commission does hereby authorize and approve said consolidation and reinsurance and the said contract therefor, subject to the following modifications thereof, namely: Stockholders of The Great Western Life Insurance Company be allowed fifteen days from the date of the approval by this commission of the consolida-

tion contract in which to elect whether they will take stock in the consolidated company or cash for their stock in The Great Western, instead of thirty days as provided in Article IV, by the International Life Insurance Company within five days after the approval of this agreement by said tribunal, and unless the International shall be given notice in writing within said period by each stockholder of The Great Western as to his election to take stock or money, any stockholder failing to give said notice within fifteen days from the approval of the consolidation contract by the commission shall be held to have elected to take stock in the International for his stock in The Great Western in the proportion set forth in the consolidation contract.

The provisions in Article III of the contract of consolidation, relating to the benefits of holders of Special Income Policies, shall be stricken out of said contract, and in lieu thereof, the following provisions shall be written in said contract:

'provided that premiums on policies, containing Special Income provisions, known as the Dollar Special, shall be reduced on account thereof and in lieu of all other benefits under such Special Income provisions therein, upon the following basis:—All such premiums becoming due in the year 1912 shall be reduced $2.16 for each thousand dollars of insurance; premiums becoming due in 1913 shall be reduced $2.21 per thousand; premiums becoming due in 1914 shall be reduced $2.26 per thousand; premiums becoming due in 1915 shall be reduced $2.31 per thousand; premiums becoming due in 1916 shall be reduced $2.36 per thousand; premiums becoming due in 1917 shall be reduced $2.41 per thousand; and premiums becoming due in 1918 and each year thereafter as long as the policies remain in force and while premiums are being paid thereon,
135 shall be entitled to a reduction calculated on all Great Western business which remains in force, according to the terms and condition set out in said Special Income Provisions in said policies.

The premiums on policies, containing Special Income provisions, known as the Twenty-five Cent Special, shall be reduced on account thereof and in lieu of all other benefits under such special Income provisions therein, upon the following basis:—All such premiums becoming due in the year 1912 shall be reduced $1.15 for each thousand dollars of insurance; premiums becoming due in 1914 shall be reduced $1.25 per thousand; premiums becoming due in 1915 shall be reduced $1.20 per thousand; premiums becoming due in 1914 shall be reduced $1.25 per thousand; premiums becoming due in 1915 shall be reduced $1.30 per thousand; premiums becoming due in 1916 shall be reduced $1.35 per thousand; premiums becoming due in 1917 shall be reduced $1.40 per thousand; and premiums becoming due in 1918 and each year thereafter as long as the policies remain in force and while premiums are being paid thereon, shall be entitled to a reduction calculated on all Great Western business which remains in force, according to the terms and conditions set out in said special income provisions in said policies.'

Add to Article III of said Articles of Consolidation the following:

'An order to preserve all the rights, if any, of the holders of annuity and investment certificates heretofore issued by The Great Western Life Insurance Company and allow them all of the dividends or payments to which they might be entitled under such certificates in the event The Great Western Life Ins. Co. should have continued in the life insurance business for the full term provided in such certificates and to pay any amounts already due thereon, the International Life Insurance Company, for itself and its successors, hereby agrees that as to the said certificates, one suit may be brought in the Courts of Missouri for such an amount as would give the Supreme Court jurisdiction thereof on appeal, and the final judgment in such suit shall be binding upon the International Life Insurance Company and its successors for all the certificates of the class or classes adjudicated in said suit, and in the event that the final decision in said suit shall be that the annuity and investment certificates issued by The Great Western Life Insurance Company are valid and subsisting contracts and obligations against that Company, then the said International Life Insurance Company agrees that it will pay to the holders or owners of such certificates, the amount paid as the purchase price of such certificates, which payment shall be made at the agency of said last named Company in Kansas City Missouri, and in the event said International Life Insurance Company has no such agency, then at the First National Bank, of Kansas City Missouri, within ten days from the time such certificate shall be presented for payment; or, if said International Life Insurance Company shall prefer, it may elect to continue said annuity and investment certificates in full force and effect, according to the terms thereof,
136 except that the same shall apply to all of the insurance written by said International Life Insurance Company during the term provided in said contracts except reinsurance and business acquired by merger other than present business of The Great Western by paying whatever is due and owing upon said certificates by The Great Western Life Insurance Company at the date of this agreement, upon demand therefor, and by paying from this date their proportionate part of ten cents per thousand dollars of all insurance written, except reinsurance and business acquired by merger other than the present business of The Great Western in the place and stead of the twenty-five cents per thousand dollars, as expressed in said certificates.

Nothing herein shall be construed as a waiver of any defense which either The Great Western Life Insurance Company or the International Life Insurance Company may have against the validity of or liability upon said certificates, nor shall it be construed to take away any right or remedy of any holder of any such certificate against the International Life Insurance Company.'

And it further appearing to the said commission that, in accordance with the law and the provisions of said contract, the corporate name and charter of the International Life Insurance Company is retained as the charter of the consolidated corporation, and

that it is necessary to modify the charter of the International Life Insurance Company in accordance with said contract as to amount and par value of the capital stock, in order to meet the requirements of said merger, the par value and capital stock of the International Life Insurance Company, in order to meet the said requirements, is hereby fixed at 13,200 shares of the par value of Twenty-five dollars ($25.00) each, so that the capital stock of the consolidated corporation shall be and is hereby fixed at the sum of Three Hundred and Thirty Thousand Dollars ($330,000.00), divided into shares of the par value of Twenty-five Dollars ($25.00) each. The said contract of consolidation and merger, subject to the foregoing modifications, is hereby in all things approved, and the name and charter of the International Life Insurance Company is retained as the charter of the consolidated corporation, modified as to amount and par value of the capital stock as aforesaid; and the said commission does hereby certify that the charter of the International Life Insurance Company, modified as aforesaid, has been duly approved as the charter of the consolidated corporation.

Witness our hands and the hand and official seal of the Superintendent of Insurance of the State of Missouri, hereunto affixed, this seventh day of December, 1912.

FRANK BLAKE,
Insurance Superintendent State of Missouri.
IKE S. LEWIS,
Insurance Superintendent State of Kansas.
[L. S.] B. L. GILL,
Commissioner of Insurance and Banking, State of Texas.

137 State of Missouri, Insurance Department.

I, Charles G. Revelle, Superintendent of the Insurance Department of the State of Missouri, do hereby certify that the above and foregoing is a true and correct copy of the original contract between the International Life Insurance Company and the Great Western Life Insurance Company together with commissioner's ratification of merger agreement, which said originals are now on file in this department.

In testimony whereof, I have hereunto set my hand and caused to be hereto affixed the seal of said department, at my office in the City of Jefferson, this 20th day of January, 1915.

[Seal Insurance Department, State of Missouri.]

CHAS. G. REVELLE,
Superintendent,
By EARL F. WILSON,
Deputy Superintendent."

GEORGE KUMPF, called as a witness on the part of the plaintiff, having been duly sworn, testified as follows:

Direct examination.

By Mr. Landon:

Q. State your name, please?
A. George Kumpf.
Q. And your residence and occupation?
A. My office is in the Ridge Building. Fire insurance.
Q. How long have you resided here, Mr. Kumpf?
A. About fifty-three years.
Q. What relation, if any, is George J. Kumpf to you?
A. My son.
Q. And Lena V. Kumpf?
A. My wife.
Q. And Henry C. Kumpf?
A. My son.
Q. And Helen E. J. Kumpf?
A. My daughter.
Q. I will ask you, Mr. Kumpf——
A. (Interrupting.) There is one more certificate.
Q. I know. We didn't get that until later on. I will ask you if, in August of 1907, you purchased the annuity certificates which have been marked——

(Certificates here marked Exhibit "5," Exhibit "6," Exhibit "7," Exhibit "8" and Exhibit "9," respectively, for identification.)

Q. (Continuing:) —Exhibit "5," Exhibit "6," Exhibit "7," Exhibit "8" and Exhibit "9," in your own behalf and that of your two sons, or wife and daughter?
A. Yes, sir.
Q. And have you paid the amounts as stated in the certificates therefor?
A. Yes, sir.

Mr. Neel: May I ask what counts in the petition they cover?
Mr. Landon: Yes, they cover the 8th, 9th, 10th and 11th counts of the petition.

By Mr. Landon:

Q. Now, Mr. Kumpf, upon these certificates, the exhibits I have mentioned, did you receive a dividend the first year of eight per cent?
A. Yes, sir; I think I did.

138 Mr. Landon: Mark those, please.

(Papers here marked Exhibit "11," Exhibit "12," Exhibit "13," Exhibit "14" and Exhibit "15," respectively, for identification.)

Mr. Landon: I presume, if the court please, that we should have special findings. I suggested to Senator Cooper, that each side pre-

pare the findings they desire and submit them, in order to make as easy for Your Honor as possible.

By Mr. Landon:

Q. Mr. Kumpf, I show you Exhibit "11," Exhibit "12," Exhibit "13," Exhibit "14" and Exhibit "15," and ask you by whom those exhibits were executed; and, if you know the handwriting signed to them.

A. (Examining papers.) Exhibit "11" is signed by my son George J. Kumpf. Exhibit "12" is signed by myself.

Q. Exhibit "13"?

A. By my wife, Lena Kumpf.

Q. Exhibit "14"?

A. By my son, Henry C. Kumpf.

Q. Exhibit "15"?

A. By my daughter, Helen Kumpf.

Mr. Landon: I offer in evidence, now, Exhibit "5," which refers to the 8th Count in the petition; and Exhibit "6," referring to the 9th Count; and Exhibit "7," referring to the 10th Count; and Exhibit "8," referring to the 11th Count; and Exhibit "9," referring to the 12th Count; and, also, Exhibit "11," Exhibit "12," Exhibit "13," Exhibit "14" and Exhibit "15," being the assignments on the certificates.

Said papers so offered in evidence, marked Exhibit "5," Exhibit "6," Exhibit "7," Exhibit "8," Exhibit "9," Exhibit "11," Exhibit "12," Exhibit "13," Exhibit "14" and Exhibit "15," respectively are in the words and figures following, to-wit:

EXHIBIT "5."

"UNITED STATES OF AMERICA.

(Here Appears Design.)

The Great Western Life Insurance Co., Kansas City, Mo.

No. 377. Shares, One. $150.00.

Annuity Certificate.

Whereas, The Great Western Life Insurance Company (hereinafter called the Company), is desirous of qualifying for the writing of Life Insurance in a number of States, to the end that a large volume of business may be quickly and economically produced, and

Whereas, The Company is authorized by its Charter to carry on the business of Insurance upon the lives of individuals, and every insurance pertaining thereto or connected therewith, and to grant, purchase and dispose of annuities and endowments of every kind and description, and is especially authorized, by Resolution of its

Board of Directors, to dispose of annuities in the various States in which it desires to write Life Insurance, upon the basis, at
139 par, of One Hundred and Fifty ($150.00) Dollars per share, and,

Whereas, George J. Kumph has paid to the Company for one of said shares, the sum of one hundred fifty dollars.

Now therefore, in consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof, an annuity during his life, and thereafter to his heirs or personal representatives, of one shares of the proceeds of twenty-five cents for one thousand dollars of all insurance, except re-insurance, written by the Company in the United States for fifty years from the date of its incorporation, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows, to-wit:

I. The aggregate of said twenty-five cents per one thousand dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by Five Hundred, the quotient obtained shall be the apportionment to each of said shares, and the total of one shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The Company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the Company herefor, as stated above.

III. This Certificate is assignable in writing and transferable only on the books of the Company, in person or by attorney, upon presentation of this Certificate at the Home Office of the Company.

In witness whereof, The Great Western Life Insurance Company has caused this Certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 5th day of August, 1907.

O. L. VAN LANNIGHAM,
President.

[Seal The Great Western Life Insurance Company, Kansas City, Mo.]

Attest:
E. L. BIERSMITH,
Secretary.

On the back or reverse side thereof appears the following:

"Assignment.

For value received, I hereby sell, assign and transfer unto ——— the within certificate and the shares represented thereby, and hereby constitute the present Secretary of The Great Western Life

Insurance Company as my agent and attorney in fact to transfer the same on the books of the Company.

Witness my hand this — day of ——, 19—.

—— ——.

Witness:

—— ——.

140 *Certificate of Transfer.*

The Great Western Life Insurance Company hereby acknowledges the assignment of the within certificate and the share represented thereby to —— —— and has transferred the same upon the books of the Company accordingly.

THE GREAT WESTERN LIFE INSURANCE COMPANY,

By —— ——,

Secretary.

(Further assignments hereof may be made in accordance with above forms, and attached hereto.")

"The Great Western Life Insurance Co., Kansas City, Mo. Annuity Certificate. George J. Kumpf, Town, Kansas City; County Jackson; State, Missouri.

EXHIBIT "6."

"UNITED STATES OF AMERICA.

(Here Appears Design.)

The Great Western Life Insurance Co.

Kansas City, Mo.

No. 381. Shares, Ten. $1,500.00.

Annuity Certificate.

Whereas, The Great Western Life Insurance Company (hereinafter called the Company), is desirous of qualifying for the writing of Life Insurance in a number of States, to the end that a large volume of business may be quickly and economically produced, and

Whereas, The Company is authorized by its Charter to carry on the business of Insurance upon the lives of individuals, and every insurance pertaining thereto or connected therewith, and to grant, purchase and dispose of annuities and endowments of every kind and description, and is specifically authorized, by resolution of its Board of Directors, to dispose of annuities in the various states in which it desires to write Life Insurance upon the basis, at par, of One Hundred and Fifty ($150.00) dollars per share, and,

Whereas, George Kumpf has paid to the Company for ten of said shares, the sum of fifteen hundred dollars.

Now therefore, in consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof, an annuity during his life, and thereafter to his heirs or personal representatives, of ten shares of the proceeds of twenty-five cents per one thousand dollars of all insurance, except re-insurance, written by the Company in the United States For Fifty Years From The Date of Its Incorporation, on which premiums computed on the annual basis have been received in cash, and also for so long
141 thereafter as premiums are received on said insurance; such annuity to be determined as follows, to-wit:

I. The aggregate of said twenty-five cents per One Thousand Dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by Five Hundred, the quotient obtained shall be the apportionment to each of said shares, and the total of ten shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The Company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the company herefor, as stated above.

III. This Certificate is assignable in writing and transferable only on the books of the Company, in person or by attorney, upon presentation of this Certificate at the Home Office of the Company.

In witness whereof, The Great Western Life Insurance Company has caused this Certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 5th day of August, 1907.

O. L. VAN LANINGHAM,
President.

[Seal The Great Western Life Insurance Company, Kansas City, Mo.]

Attest:
E. L. BIERSMITH, *Secretary.*

On the back or reverse side thereof appears the following:

"*Assignment.*

For value received, I hereby sell, assign and transfer unto —— —— the within certificate and the shares represented thereby, and hereby constitute the present Secretary of The Great Western Life Insurance Company as my agent and attorney in fact to transfer the same on the books of the Company.

Witness my hand this — day of ——, 19—.

(Signed) GEO. KUMPF.

Witness:

—— ——.

Certificate of Transfer.

The Great Western Life Insurance Company hereby acknowledges the assignment of the within certificate and the shares represented thereby to —— —— and has transferred the same upon the books of the Company accordingly.

THE GREAT WESTERN LIFE INSURANCE COMPANY,

By —— ——,
Secretary.

142 (Further assignments hereof may be made in accordance with above forms, and attached hereto.")

"The Great Western Life Insurance Co., Kansas City, Mo., Annuity Certificate. George Kumpf. Town, Kansas City, County, Jackson, State, Missouri. Union Bank Note Co. K. C. Mo. Form 1005-6-07.

EXHIBIT "7."

"UNITED STATES OF AMERICA.

(Here Appears Design.)

The Great Western Life Insurance Co

Kansas City, Mo.

No. 379. Shares, Three. $150.00.

Annuity Certificate.

Whereas, The Great Western Life Insurance Company (hereinafter called the Company), is desirous of qualifying for the writing of Life Insurance in a number of States, to the end that a large volume of business may be quickly and economically produced, and

Whereas, The Company is authorized by its Charter to carry on the business of Insurance upon the lives of individuals, and every insurance pertaining thereto or connected therewith, and to grant, purchase and dispose of annuities and endowments of every kind and description, and is specifically authorized, by resolution of its Board of Directors, to dispose of annuities in the various States in which it desires to write Life Insurance, upon the basis at par, of One Hundred and Fifty ($150.00) dollars per share, and,

Whereas, Lena V. Kumpf has paid to the Company for three of said shares, the sum of four hundred fifty dollars.

Now, therefore, In consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof, an annuity during his life, and thereafter to his heirs or personal representatives

of three shares of the proceeds of Twenty-five Cents Per One Thousand Dollars of all insurance, except re-insurance, written by the Company in the United States For Fifty Years From The Date Of Its Incorporation, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows, to-wit:

I. The aggregate of said twenty-five cents per One Thousand Dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by Five Hundred, the quotient obtained shall be the apportionment to each of said shares, and the total of three shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The Company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the Company herefor, as stated above.

143 III. This Certificate is assignable in writing and transferable only on the books of the Company, in person or by attorney, upon presentation of this Certificate at the Home Office of the Company.

In Witness Whereof, The Great Western Life Insurance Company has caused this Certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 5th day of August, 1907.

[Seal The Great Western Life Insurance Company, Kansas City, Mo.]

O. L. VAN LANINGHAM,
President.

Attest:

E. L. BIERSMITH,
Secretary."

On the back or reverse side thereof appears the following:

"*Assignment.*

For value received, I hereby sell, assign and transfer unto —— —— the within certificate and the shares represented thereby, and hereby constitute the present Secretary of The Great Western Life Insurance Company as my agent and attorney in fact to transfer the same on the books of the Company.

Witness my hand this — day of ——, 19—.

—— ——.

Witness

—— ——.

Certificate of Transfer.

The Great Western Life Insurance Company hereby acknowledg the assignment of the within certificate and the shares represent thereby to —— —— and has transferred the same upon the boo of the Company accordingly.

THE GREAT WESTERN LIFE INSURANCE COMPANY,

By —— ——,

Secretary.

(Further assignments hereof may be made in accordance wi above forms, and attached hereto.")

"The Great Western Life Insurance Co., Kansas City, M Annuity Certificate. Lena V. Kumpf, Town, Kansas City, Count Jackson, State, Missouri. Union Bank Note Co. K. C. Mo. For 1005-6-07."

144 EXHIBIT "8."

"United States of America.

(Here Appears Design.)

The Great Western Life Insurance Co.

Kansas City, Mo.

No. 376. Shares, One. $150.00.

Annuity Certificate.

Whereas, The Great Western Life Insurance Company (her inafter called the Company), is desirous of qualifying for the writi of Life Insurance in a number of States, to the end that a lar volume of business may be quickly and economically produced, an

Whereas, The Company is authorized by its Charter to carry the business of Insurance upon the lives of individuals, and ever insurance pertaining thereto or connected therewith, and to gra purchase and dispose of annuities and endowments of every kin and description, and is specifically authorized, by resolution of Board of Directors, to dispose of annuities in the various States which it desires to write Life Insurance, upon the basis, at par, One Hundred and Fifty ($150.00) dollars per share, and,

Whereas, Henry C. Kumpf has paid to the Company for one said shares, the sum of One Hundred Fifty dollars.

Now Therefore, In consideration of the premises, the Compan hereby agrees to apportion and pay to the owner hereof, an annui during his life, and thereafter to his heirs or personal representative of one shares of the proceeds of Twenty-five Cents Per One Thou

sand Dollars of all insurance, except re-insurance, written by the Company in the United States For Fifty Years From The Time Of Its Incorporation, on which premiums computed on the annual basis have been received in each, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows, to-wit:

I. The aggregate of said twenty-five cents per One Thousand Dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by Five Hundred, the quotient obtained shall be the apportionment to each of said shares, and the total of one shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The Company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the Company herefor, as stated above.

III. This Certificate is assigned in writing and transferable only on the books of the Company, in person or by attorney, upon presentation of this Certificate at the Home Office of the Company.

145 In Witness Whereof, The Great Western Life Insurance Company has caused this Certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 5th day of August, 1907.

[Seal The Great Western Life Insurance Company, Kansas City, Mo.]

O. L. VAN LANINGHAM,
President.

Attest:
E. L. BIERSMITH,
Secretary."

On the back or reverse side thereof appears the following:

"*Assignment.*

For Value Received, I hereby sell, assign and transfer unto ——, the within certificate and the shares represented thereby, and hereby constitute the present Secretary of The Great Western Life Insurance Company as my agent and attorney in fact to transfer the same on the books of the Company.

Witness my hand this — day of ——, 19—.

—— ——.

Witness:

—— ——.

Certificate of Transfer.

The Great Western Life Insurance Company hereby acknowledges the assignment of the within certificate and the shares represented

thereby to —— —— and has transferred the same upon the books of the Company accordingly.

THE GREAT WESTERN LIFE INSURANCE COMPANY,

By —— ——, *Secretary.*

(Further assignments hereof may be made in accordance with above forms, and attached hereto.")

"The Great Western Life Insurance Co., Kansas City, Mo., Annuity Certificate. Henry C. Kumpf. Town, Kansas City, County Jackson. State, Missouri. Union Bank Note Co. K. C. Mo. Form 1005-6-07."

EXHIBIT "9."

"United States of America.

(Here Appears Design.)

The Great Western Life Insurance Co., Kansas City, Mo.

No. 378. Shares, One. $150.00.

Annuity Certificate.

Whereas, The Great Western Life Insurance Company (hereinafter called the Company), is desirous of qualifying for the
146 writing of Life Insurance in a number of States, to the end that a large volume of business may be quickly and economically produced, and

Whereas, The Company is authorized by its Charter to carry on the business of Insurance upon the lives of individuals, and every insurance pertaining thereto or connected therewith, and to grant, purchase and dispose of annuities and endowments of every kind and description, and is specifically authorized, by Resolution of its Board of Directors, to dispose of annuities in the various States in which it desires to write Life Insurance, upon the basis, at par, of One Hundred and Fifty ($150.00) Dollars per share, and

Whereas, Helen E. J. Kumpf has paid to the Company for One of said shares, the sum of One Hundred Fifty Dollars.

Now therefore, in consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof, an annuity during his life, and thereafter to his heirs or personal representatives of One shares of the proceeds of Twenty-five Cents per One Thousand Dollars of all insurance, except reinsurance, written by the Company in the United States for fifty years from this date of its incorporation, on which premium- computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows, to-wit:

I. The aggregate of said twenty-five cents per One Thousand Dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by Five Hundred, the quotient obtained shall be the apportionment to each of said shares, and the total of One shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The Company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the Company hereafter, as stated above.

III. This Certificate is assignable in writing and transferable only on the books of the Company, in person or by attorney, upon presentation of this Certificate at the Home Office of the Company.

In witness whereof, The Great Western Life Insurance Company has caused this Certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 5th day of August, 1907.

[Seal The Great Western Life Insurance Company, Kansas City, Mo.]

O. L. VAN LANINGHAM,
President.

Attest:
E. L. BIERSMITH,
Secretary."

147 On the back or reverse side thereof appears the following:

"*Assignment.*

For value received, I hereby sell, assign and transfer unto —— —— the within certificate and the shares represented thereby, and hereby constitute the present Secretary of The Great Western Life Insurance Company as my agent and attorney in fact to transfer the same on the books of the Company.
Witness my hand this — day of ——, 19—.

—— ——.

Witness:
—— ——.

Certificate of Transfer.

The Great Western Life Insurance Company hereby acknowledges the assignment of the within certificate and the shares represented thereby to —— —— and has transferred the same upon the books of the Company accordingly.

THE GREAT WESTERN LIFE INSURANCE COMPANY,
By —— ——,
Secretary.

(Further assignments hereof may be made in accordance with above forms, and attached hereto.")

"The Great Western Life Insurance Co., Kansas City, Mo. Annuity Certificate. Helen E. J. Kumpf, Town, Kansas City, County, Jackson; State, Missouri. Union Bank Note Co. K. C. Mo. Form 1005-6-07."

EXHIBIT "11."

"I, Geo. J. Kumpf, the undersigned, being the holder and owner of certain annuity and investment certificates issued by The Great Western Life Insurance Company, of Kansas City, Missouri, and having the face value of $150.00, for a good and valuable consideration, do hereby assign to —— —— the said certificates, conveying to him the title that I have thereto.

Witness my hand this — day of December, 1912.

(Signed) GEORGE J. KUMPF.

Kansas City, Mo."

EXHIBIT "12."

"I, George Kumpf, the undersigned, being the holder and owner of certain annuity and investment certificates issued by The Great Western Life Insurance Company, of Kansas City, Missouri, and having the face value of $1,500.00, for a good and valuable consideration, do hereby assign to —— —— the said certificates, conveying to him the title that I have thereto.

Witness my hand this 31st day of December, 1912.

(Signed) GEO. KUMPF.

Kansas City, Mo."

148 EXHIBIT "13."

"I, Lena V. Kumpf, the undersigned, being the holder and owner of certain annuity and investment certificates issued by The Great Western Life Insurance Company, of Kansas City, Missouri, and having the face value of $450.00, for a good and valuable consideration, do hereby assign to —— —— the said certificates, conveying to him the title that I have thereto.

Witness my hand this — day of December, 1912.

(Signed) LENA V. KUMPF.

Kansas City, Mo."

EXHIBIT "14."

"I, Henry C. Kumpf, the undersigned, being the holder and owner of certain annuity and investment certificates issued by The Great Western Life Insurance Company, of Kansas City, Missouri

and having the face value of $150.00, for a good and valuable consideration, do hereby assign to —— —— the said certificates, conveying to him the title that I have thereto.

Witness my hand this 31st day of December, 1912.

(Signed) HENRY C. KUMPF.

Kansas City, Mo."

EXHIBIT "15."

"I, Helen E. J. Kumpf, the undersigned, being the holder and owner of certain annuity and investment certificate issued by The Great Western Life Insurance Company, of Kansas City, Missouri, and having the face value of $150.00, for a good and valuable consideration, do hereby assign to —— —— the said certificates, conveying to him the title that I have thereto.

Witness my hand this — day of Dec. 1912.

(Signed) HELEN E. J. KUMPF."

By Mr. Landon:

Q. Did you receive any other moneys, Mr. Kumpf, other than the first dividend of eight per cent?

A. No, sir.

Mr. Landon: That is all.

Cross-examination.

By Mr. Cooper:

Q. Mr. Kumpf, I don't want to go into any personal private matter, but I understood that Mr. Jobes has had these certificates in his possession until last Saturday. Were they deposited with him as receiver of the Life Insurance Company, by you and your folks?

A. Well, I had those——

Q. (Interrupting.) Well, if it is a private matter?

A. No, I don't know that it is. I had them until some time in 1912, when Mr. Landon got them; and before that, in fact, I didn't know where they were any more until I found the receipt where they had been left.

149 Q. They had been left where?

A. At the Security National Bank.

Q. That was Mr. Jobes' bank?

A. Yes, sir.

Q. When were they first left there, Mr. Kumpf?

A. I don't remember the exact date any more. It was some years ago.

Q. You haven't got the receipt?

A. No.

Q. Was it along in the latter part of 1908?

A. No, it was after that.
Q. What is your best recollection?
A. Somewhere along in 1910 or 1911.
Q. Where is the receipt that you referred to?
A. How?
Q. You mentioned a receipt a minute ago?
A. I haven't got the receipt any more.
Q. What did you do with it?
A. I left it up there.
Q. At the bank?
A. Yes, sir.
Q. Do you know whether they destroyed it or not?
A. I don't know.
Q. When were these certificates left up there, originally?
A. I don't know much about it, it has been so many years ago. I didn't know a thing about this matter until yesterday afternoon.
Q. Refresh your memory the best you can, Mr. Kumpf, and tell the court when the certificates were originally deposited with Mr. Jobes or the Security National Bank?
A. I don't really remember now when they were left there. It is so many years ago, I don't remember.
Q. Were they up there as collateral security?
A. I didn't know where they were until I was called upon to look up those certificates and see if I could locate them.
Q. Who did the receipt say left them there, you?
A. No, I think Mr. J. G. Strain did.
Q. What did he have to do with them?
A. I think I gave them to him at one time to see what he could do with them, whether they were worth anything, or, whether I was beaten out of the money.
Q. That was about the time of the reorganization of the Company, wasn't it?
A. When was the reorganization, in 1912?
Q. In 1908?
A. No, that was afterwards, I think.
Q. What do you mean by "beat you out of money,"—by the reorganization?
A. No, because I couldn't get anything on them; and I was told that the certificates were not worth anything, that I was beaten out of them, that it was one of Van Laningham's schemes.
Q. And that the Federal Court had cancelled them?
A. No, I never heard that.
Q. And you think that Mr. Strain left them over at the Security National Bank?
A. Yes.
Q. Did you give them to Mr. Strain to sell for you?
A. Well, he is in that business. I don't remember now what I did leave them there for, because it is a great many years ago,
150 and I haven't thought of those certificates for years. I was just considering it as lost money, that I had been swindled out of it.

Mr. Cooper: That is all.
Mr. Landon: That is all.

Witness excused.

Mr. Landon: Now, in order to dispose of these missing counts here, the counts that we haven't the certificates for, I desire to dismiss them. I desire to dismiss the 3rd Count, the 6th Count, the 7th Count, the 15th Count, the 19th Count, the 20th Count, the 21st Count, the 22nd Count, the 98th Count, the 99th Count, the 102nd Count, the 104th Count and the 105th Count.
Mr. Landon: We rest.

Here the plaintiff rested his case.

Mr. Cooper: I desire to offer a demurrer on the usual grounds, that under the pleadings and the evidence plaintiff is not entitled to recover.
The Court: It will be overruled.

To which ruling and action of the court the defendant by its counsel then and there duly excepted and still excepts.

The Court: We will take a recess now, until 2.00 o'clock.

Here the court adjourned the further hearing of this cause for the noon recess, and until 2.00 o'clock p. m. on said day, Friday, January 18th, 1918.

Friday, January 18, 1918—2 p. m.

On Friday, the 18th day of January, 1918, at two o'clock P. M. on said day, the court resumed the hearing of this cause and further proceedings were had, as follows:

Mr. Neel: Now, Mr. Landon, as to Count 17: Did I understand you dismissed as to that count this morning?
Mr. Landon: I thought I did.
The Court: No, it wasn't dismissed.
Mr. Landon: Intended to. We dismiss Count 17.

Defense.

Thereupon the defendant, to sustain the issues upon its behalf, then offered and introduced evidence oral and documentary in the words and figures following:

Mr. Neel: I want to offer in evidence a stipulation with reference to the testimony of Mr. James Chappelle,—this testimony and Exhibit "C" attached, which is a copy of the order or decree of Judge McPherson in the suit known as Wagstaff vs. Great Western Agency Company, in the United States Circuit Court for the Western
151 Division of the Western District of Missouri, in Equity, No. 3367. The stipulation is that we may read the testimony of Mr. Chappelle.

Said stipulation so offered, was marked Exhibit "A," and read in evidence in the words and figures following, to-wit:

EXHIBIT "A."

"In the Circuit Court of Jackson County, Missouri, at Kansas City, January Term, 1918.

Number 75591.

ADRIAN F. SHERMAN, Plaintiff,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY, Defendant.

Stipulation.

The attached may be read as the deposition of James Chappelle, he being absent from Missouri at the time of the trial. Plaintiff, however, reserves the right to object to any portion of the testimony therein set forth on the grounds of competency, relevancy and materiality.

(Signed) THAD B. LANDON,
ATWOOD, HILL & POPHAM, AND
WM. THOMPSON,
Attorneys for Plaintiff.

(Signed) LESLIE J. LYONS,
COOPER, NEEL & WRIGHT,
Attorneys for Defendant."

Mr. Neel: I will now read the testimony of Mr. James Chappelle. Said testimony, so offered and read in evidence, is as follows:

"Testimony of James Chappelle.

Q. What is your name and where do you reside?

A. James Chappelle and I reside in Kansas City, Missouri.

Q. What connection, if any, did you have with the affairs of the Great Western Agency Company (which we will hereafter refer to as the Agency Company) and with the Great Western Life Insurance Company (which we will hereafter refer to as the Insurance Company), during the year 1908?

A. I was Trustee for Stockholders of the Agency Company and certain holders of Annuity or Investment Certificates issued by the Insurance Company. Also I was secretary of the Insurance Company, beginning shortly after the decree of Judge McPherson in the Federal Court at Kansas City in the Wagstaff or receivership case.

Q. Do you recall that Judge McPherson's decree was printed and, if so, when?

A. Yes, it was printed immediately after it was rendered.

Q. Is the printed pamphlet which I now hand you the printed copy of the decree to which you refer?

A. Yes.

Said pamphlet is offered in evidence by the defendant, is hereto attached, marked 'Exhibit C' and made a part of this testimony.

152 Q. Were any steps taken within your knowledge to distribute the printed decree among any of the parties interested in the Agency Company or the Insurance Company, and if so, what was done?

A. Yes, a copy of such printed decree was mailed by me or under my direct supervision at Kansas City, Missouri, postage prepaid, to each holder of stock of the Agency Company and also to each holder of an Annuity or Investment Certificate, issued by the Insurance Company. But these were not sent out by direction or order of the court, but was voluntarily done by me.

Q. When?

A. Just as quickly as we could get them off. Just two or three or possibly four days before we finished getting the last of them out. I will say that within a week after the decree was rendered, printed copies thereof had all been mailed to the persons I have referred to,—namely, Agency Company stockholders and Annuity and Investment Certificate holders.

Q. How did you ascertain the names and addresses of the Certificate holders?

A. From the books and records of the Insurance Company. But of course I do not know anything as to the correctness of the books, as to the addresses of the certificate holders, nor whether the addresses of the holders in this suit were correct.

Q. The decree recites that upwards of $100,000.00 was paid in to W. T. Kemper and was used to pay off certain obligations therein set out. Are you familiar with this transaction?

A. Yes, I looked after the collection of the money in my capacity as trustee.

Q. By whom was the money paid in?

A. I do not remember all of the names of the individuals, but they were all stockholders in the Agency Company or holders of Annuity and Investment Certificates, but only a part of the certificate holders mentioned in this case contributed any money, as shown by list of names hereto attached marked Exhibit B.

Q. What proportion of all the certificate holders contributed, if you know?

A. I cannot give you the exact number, but it was over half of them. I would say about seventy-five per cent of the Certificate Holders paid their assessment under the decree and took stock in the reorganized Insurance Company.

Q. In a general way, how were you created trustee and what duties or work did you perform as such?

A. After the Wagstaff suit was filed in the Federal Court, a great many of the Agency Company stockholders and certain certificate holders, not including, however, all the certificate holders named

in this case, met in Topeka, and later held several meetings in Kansas City, Missouri, and I was informally designated by certain stockholders and annuity certificate holders as a sort of trustee to collect money and take such steps as might be necessary to pay the debts of the Insurance Company and to generally handle the situation. I cannot say whether or not any certificate holders named in this case, other than those named in Exhibit B, participated in my selection as trustee. I cannot say what stockholders and cer-
153 tificate holders were present at the meetings. Finally I collected in the money mentioned in the decree, which, according to my best recollection was $130,000.00, which was used for the purposes and in the manner set forth in the decree.

Q. Was there any paper or writing entered into or executed appointing you as trustee and prescribing your duties?

A. My appointment was informal. The persons present at the meeting simply agreed that I should act in the capacity mentioned.

Q. The decree provides that C. S. Jobes, the receiver, should sell to you as trustee, certain stock in the Insurance Company. Do you recall the transaction?

A. Yes.

Q. What was done?

A. Stock was sold to me by Mr. Jobes as the decree recites.

Q. What did you do with it?

A. Sometime after the twenty days named in the decree expired for the persons referred to to come in and pay their assessments or contributions, the stock was distributed pro rata among the Agency Company stockholders and the Certificate Stockholders, upon surrender of their certificates, but none was distributed to those who did not come into the reorganization.

Q. During the time that you were secretary of the Insurance Company, was any demand or claim made upon or through you by any of the non-contributing or non-participating certificate holders?

A. No. The first I ever heard of any of the certificate holders claiming that they were entitled to their money back was about the time of the merger or consolidation with the International Life Insurance Company of St. Louis."

EXHIBIT "B."

"A. F. Deruy.	W. T. Grove.	T. E. Dittemore.
J. A. Schrey.	Joseph Inthrum.	F. C. Fear.
J. F. Mathis.	W. H. Mathis.	John C. Nicholson.
S. Lehman.	C. Lehman.	C. F. Classen.
A. B. Gilbert.	W. E. Grove.	C. E. Finley.
W. H. Wiggans.	C. L. Davis.	A. E. Smolt.
W. G. Cheney.	L. C. Herst.	S. M. Swartz.
H. E. Suderman.	P. M. Hoisington.	F. D. Kaufman.
C. E. Stephens.	Farley Cardern.	F. S. Hurd."

Endorsed on the back thereof is the following:

"Number 75591. Adrian F. Sherman, Plaintiff, vs. International Life Insurance Company, Defendant. Stipulation. Cooper, Neel & Wright, Kansas City, Missouri."

Mr. Neel: I now offer this Exhibit C, attached to the testimony, being the decree or order of Judge McPherson in this case of Wagstaff vs. Great Western Life Insurance Company and others.

Mr. Landon: I desire to object to Exhibit C, the decree,
154 for the reason it is incompetent and immaterial as to any of the certificate holders in issue in this case, for the reason that there is no showing that the parties here in controversy were parties to that suit, and for the further reason that it is in no way controlling upon such parties.

The Court: The question as to whether or not they are parties to this suit, I should think, would be determined by the notices given under the orders of this court.

Mr. Neel: I might say we expect to offer the pleadings and appearances and orders and notices, with reference to that suit, in evidence.

Mr. Landon: I don't think that is wholly controlling.

The Court: If they are creditors within the meaning of that term, I should think they would be bound by the notice. It is just a question whether they were creditors within the meaning of that term.

Mr. Landon: I object for the further reason that the decree does not show that at that time the court had jurisdiction of any kind over the holders of certificates now in question in this case.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said document, marked Exhibit C and attached to said testimony of James Chappelle, is as follows:

EXHIBIT "C."

"Order and Decree by Judge Smith McPherson.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF, R. E. BROOKS, J. E. KEEL, H. E. ELLISON, L. A. Sharrard, George C. Anderson, A. L. Driggs, F. D. Shellabarger, J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J. S. Engle, P. B. Witmer and Ira Puterbaugh, Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN Life Insurance Company, O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall and Julia W. Van Laningham, Defendants.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF, R. E. BROOKS, J. E. KEEL, H. E. ELLISON, L. A. Sharrard, George C. Anderson, A. L. Driggs, F. D. Shellabarger, J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J. S. Engle, P. B. Witmer and Ira Puterbaugh, Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN Life Insurance Company, O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall and Julia W. Van Laningham, Defendants.

155 Orders and Decree.

Now on this 27th day of August, 1908, being one of the regular days of the April, 1908, term of said court, came on further to be heard the objections and exceptions of F. M. Pearl and other stockholders of The Great Western Agency Company and Annuity Certificate holders of The Great Western Life Insurance Company to the confirmation of the sale of the assets, properties and business of said The Great Western Life Insurance Company heretofore made by the Receiver hereof, complainants appearing by John H. Atwood, Esq., and H. C. Timmonds, Esq., said Receiver appearing

in person and by E. L. Scarritt, Esq., and Frank P. Sebree, Esq., his solicitors; The Kansas City Life Insurance Company, a bidder at said sale, appearing by R. J. Ingraham, Esq., its solicitor; The Philadelphia Life Insurance Company, a bidder at said sale, appearing by Charles M. Howell, Esq., and Frank Smith, Esq., its solicitors; Franklin Adams, J. Q. Cowee and other interveners appearing by A. L. Cooper, Esq., their solicitor; said objectors appearing by E. A. Berry, Esq., James W. Orr, Esq., their solicitors; —— Hess appearing by Hunt C. Moore, Esq., his solicitor, and A. F. Sherman, Esq., appearing for himself and certain other annuity certificate holders.

And said objections and exceptions being presented to the court, and said objectors praying leave to reorganize and rehabilitate the said The Great Western Life Insurance Company and to pay its debts, outstanding obligations and take over its properties, moneys, credits and effects and restore and make good any impairment of its capital stock and thereafter conduct the business of the said The Great Western Life Insurance Company; and all parties being before the court and being heard and the court being fully informed and advised, it is considered, ordered and decreed:

1. That the plan for the reorganization and rehabilitation of the said The Great Western Life Insurance Company presented to this court be, and the same is, hereby approved by the court, upon the following terms and conditions, viz:

(*a*) That the Receiver of said Company forthwith make a complete inventory of all the properties, moneys, credits, books and effects of every kind or nature now in his possession or under his control or in the possession or control of the present officers or directors of said Company received from the said The Great Western Life Insurance Company, or later acquired in its behalf, and of any shares of the stock of The Great Western Life Insurance Company held by the directors and officers selected under the order of this court, and without delay turn over and deliver all of such property so inventoried to the officers and directors of the said The Great Western Life Insurance Company, to be hereafter named, and to take the receipt of the President and Secretary of such Company when so selected, therefor, whereupon all possession, control and dominion over the property, credits and effects of the said The Great Western Life Insurance Company and of said Company by said Receiver, including the directors heretofore selected under the
156 order of this court, shall cease and terminate and said officers and directors shall promptly tender their respective resignations as such and their terms of office are at an end.

(*b*) That immediately upon receipt of said properties, moneys, credits and effects, as above set forth, W. T. Kemper of the Commerce Trust Company, of Kansas City, Missouri, for and on behalf of The Great Western Life Insurance Company, who is hereby designated for such purpose, shall proceed at once to pay off and satisfy all the approved death claims now existing against the said The Great Western Life Insurance Company, as follows:

Death Claims Approved and Pending.

G. B. Van Laningham	$7,500.0
A. H. Brown	2,500.0
C. L. Kerr	10,000.0
Ida C. Crosse	1,000.0
Frank E. Diessroth	1,000.0
Herman Biddle	10,000.0
Leo T. Lynch	2,000.0
John W. Brown	5,000.0
Joseph E. Parker	1,000.0
David E. Dodds	2,500.0
Charles Raithal	1,000.0
Ben Levy	2,000.0
W. G. Hardeman	1,000.0
B. K. Bailey	5,000.0
Wayland R. Benedict	2,000.0

and said Kemper shall proceed without delay to the payment of the following claims against said Life Insurance Company, viz:

Claims for premiums on declined applications, aggregating, approximately	$5,000.0
The claim of Hanna & Lupton (Kansas Loan Agreement)	7,500.0
And return to them their two notes aggregating	12,500.0
And current bills and claims approximately aggregating	21,900.3
Subscriptions for proposed increase of capital stock, aggregating approximately	91,445.1

And return to such like subscribers not included in the above amount all notes taken for such like subscriptions in lieu of cash such payments to be made to them or their authorized attorneys.

To the Illinois Life Insurance Company, account of reinsurance	$654.9
or so much thereof as shall be owing.	
Accident claims	$11.4
Medical Examiners' fees	$1,500.0
or so much thereof as shall be owing.	
Balance due agents	$2,332.7
or as much thereof as shall be owing.	

157 And the said Life Insurance Company shall within thirty days from this date file with the clerk of this court vouchers showing the payment of the aforesaid matters.

(2) Within two days from the receipt of said moneys, properties and assets of the said Life Insurance Company, as above provided, said company shall make and file with the clerk of this court a bond

properly conditioned, with surety to be approved by the clerk, for the use and benefit of the receiver, in the penal sum of five thousand dollars, for the payment of such claims as against said company which may be presented and approved, but not to cover any death claims nor in any way connected with annuity certificates.

(3) Inasmuch as the plan of reorganization of the said Life Insurance Company has provided that any stockholder of The Great Western Agency Company may upon the payment of the sum equal to four dollars per share of the capital stock in said Agency Company, be entitled to so much of the capital stock of the said Life Insurance Company as will equal one-half of the amount so paid, and inasmuch as a large number of said stockholders have not yet availed themselves of this, it is by the court ordered that for a period of sixty days from and after this date, any such stockholder desiring to avail himself of such privilege may do so and the said Life Insurance Company shall receive such payment, and thereupon issue to such person the stock of the said Life Insurance Company in the proportion above specified.

Whereas it has further been the plan of the said reorganization of the said Life Insurance Company to permit holders of so-called annuity certificates heretofore issued by the said Life Insurance Company, upon the payment of the sum of $37.50 upon each share of such certificates and upon the surrender and cancellation of such certificates to receive of the capital stock of the said Life Insurance Company stock of the said company of the par value equal to one-half of the amount of such payment.

Certain certificate holders have already agreed to this, aggregating more than one-half thereof, and all such annuity certificate holders who have not so done are hereby given the privilege of so doing for twenty days from date hereof, to avail himself of such privilege, and any such annuity certificate holder failing to so avail himself within such period of time of 20 days from this date shall no longer have such privilege or right, and such annuity certificate holders shall thereafter be barred and estopped from making any claim of any kind whatsoever against said Life Insurance Company or officers or stockholder thereof, or against any assets of said company, and such annuity certificates will then and thereby be fully canceled in law and in equity, and such annuity certificate holders will have no further rights, claims or demands against said company, its officers, stockholders, assets or property on account thereof.

(4) It has been made to appear to this court that since the appointment of a receiver, May 18, 1908, and under his direction and promises, express and implied, second year premiums aggregating approximately thirty thousand dollars ($30,000.00) have been paid to him, the said receiver, by policy holders of The Great Western Life Insurance Company, which sum of money is now in the hands of Herman F. Lang, the present treasurer of said company. Said sum of $30,000.00 belongs to said Life Insurance Company, as reorganized, and it will at once be paid over to said company as reorganized, by him, the said Lang, as treasurer,

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without delay. It is claimed that said fund of thirty thousand dollars in part is a trust fund, giving the right to such policy holders who have thus paid their premiums to the receiver to withdraw such premiums thus paid. Said trust is hereby recognized to all such policy holders whose policies aggregate approximately $710,000 who may make the showing to the satisfaction and approval of this court that they have thus paid said premiums in whole or in part under the promise of any judge of this court or of the receiver, such promise being either express or implied, that such premiums should be returned to those making such payments under such promise. But to avail themselves of such trust an application therefor, accompanied by the policy and policies, shall be filed with the clerk of this court within ten days from the notice thereof. And such notice shall be regarded and held to be complete when this part of the decree in substance and effect is deposited in the post office or any branch post box thereof of Kansas City, Missouri, in an envelope properly addressed and stamped, said address being as shown by the books of said company. And any policy holder forming a part of said $710,000.00 approximately failing to file such application and policy within said time shall have no further claim as a beneficiary under said trust, and his rights thereto as such beneficiary of such trust shall be and *is* hereby decreed to be at an end and fully barred. And in the event of any of such applications to participate in such trust being affirmatively decreed by this court, such policy and policies thus filed shall be and it is hereby decreed that they are fully cancelled and held for naught. And if any of such trusts are affirmatively decreed then and in that event there shall be refunded and paid to such party or parties such an amount of such premiums thus paid to the receiver as shall be unearned for the balance of the year for which such premiums were paid. And within five days from this date the said The Great Western Life Insurance Company shall file with the clerk of this court a bond properly conditioned, with ample surety to be approved by the clerk of this court, in the penal sum of thirty thousand dollars for the immediate payment upon demand of such unearned premiums as shall be covered by decrees of this court to be entitled thereto.

The court finds that of the capital stock of said Life Insurance Company eight shares are held by individuals. The remaining 992 shares are held by C. S. Jobes, the receiver herein. But of said 992 shares of stock thus held by the receiver herein 445 shares thereof are deposited as collateral security with the National Bank of
159 Commerce of Kansas City, Missouri, for the payment of $2[illegible]
000.00 justly owing the said National Bank of Commerce of Kansas City, Missouri.

The receiver herein, C. S. Jobes, will sell at once, at private sale to James Chappelle, trustee in trust for the purchasers of the stock of The Great Western Life Insurance Company at the upset price of eleven thousand dollars, and as the property and assets of the Great Western Agency Company the said 992 shares of the capital stock of the said The Great Western Life Insurance Company, subject, however, to the lien and equities in favor of the said National Bank

f Commerce of Kansas City, Missouri, for the payment of the said 21,000.00; and both said receiver and said National Bank of Commerce, upon payment to them respectively of said sum shall promptly urrender and deliver to him, the said James Chappelle, trustee, all f the said capital stock held by them or either of them, and shall ully assign the same to the said James Chappelle, trustee, and the aid stock shall be by said Life Insurance Company at once properly ransferred on the books of said company to him the said James Chappelle, trustee.

The receiver herein for his services is hereby allowed the sum of wenty-five hundred dollars ($2,500.00).

And he is hereby allowed, in full for his solicitors' fees, the sum f three thousand dollars ($3,000.00).

And —— Case, the present president of said company, is hereby llowed the sum of twelve hundred dollars ($1,200.00).

And said Herman F. Lang, as treasurer, is hereby allowed the sum f three hundred and fifty dollars ($350.00).

After the appointment of a receiver herein the former directors all esigned, and with the approval of this court nine other directors were lected in lieu of the former directors. Each of said new directors s allowed one hundred dollars, or nine hundred dollars in the aggregate.

For the month of August, 1908, there will be a rent account due f eight hundred dollars; there will be office expenses estimated for he month of August, 1908, of one thousand dollars.

Taxable court costs due the Circuit Court of Jackson County, Missouri, estimated at ($125.00) one hundred and twenty-five dollars. Said allowances for said services, fees, compensation and salaries to officers and solicitors are hereby established in said sums, which shall be paid, and when so paid shall be in full for such claims. And the aforesaid items and one now to be mentioned, aggregate ten thousand seven hundred and seventy-nine and 17-100 ($10,779.17), for which reason the upset price of ten thousand dollars for the sale of said stock is hereby fixed. The other items of office expenses and taxable costs are subject to revision hereafter by orders of this court; and said sums thus fixed shall be at once paid. Also there is allowed $904.17 for examination of the agency and life affairs which is to be paid.

That said, The Great Western Life Insurance Company, reorganized, has deposited as an additional sum for carrying out these
160 orders and decree with the Commerce Trust Company, of Kansas City, Mo., one hundred and thirty thousand dollars ($130,000.00). And W. T. Kemper, an officer of that trust company, shall take credit on the books of said company for said moneys, and at once pay out the same in accordance with this decree, and file herein receipts therefor, which said words, 'at once' *is* hereby understood to mean within five days from the date hereof.

Thomson, Stanley & Price, for legal services, make claim for the months of June, July and August, under attorneys' contract with said life insurance company, amounting to $501.00, which shall at once be paid, provided said firm shall turn over all papers.

A. F. Sherman holds annuity certificates, face value fifteen hundred dollars. On account thereof he gave his note for $1,250, which he has not paid. The said Sherman is hereby given the privilege of surrendering said annuity certificates as fully canceled upon the receipt by him of said note, in which event he, the said Sherman will retain any dividend heretofore paid him on account of said certificates, and he will have no claim against said company for any money he paid for said certificates. And the same right and privilege and burden is hereby given to and cast upon any other annuity certificate holder who has given a note or notes on account of annuities.

Other claims now or that may hereafter be asserted, not hereinbefore covered, are passed for the future consideration of the court.

It is further ordered by the court that the respective bids of the Kansas City Life Insurance Company and the Philadelphia Life Insurance Company for the property, assets, business and effects of the said The Great Western Life Insurance Company, are each declined and the court declines to approve of either of said bids; and the receiver will at once return to them their respective deposits and the bonds that they or either of them have filed herein, are hereby declared to be at an end and the liability thereon both as to principal and sureties is at an end.

It is further ordered and decreed that the jurisdiction of this court is fully retained, extended and continued from time to time until this cause is finally concluded, over all subjects-matter covered by any pleading now on file or that later on may be filed; and over all parties whose names are now on the record and such other party or parties as may later on be brought into court, or who may come into court by any pleading. And all such parties now to the record, including the said, The Great Western Life Insurance Company, and all parties who may later on be made parties herein, shall be bound by such further orders and decrees as to the court may seem necessary and proper. All of which are ordered of record this August 27th, 1908.

(Signed) SMITH McPHERSON,
Judge.

161 Mr. Neel: I wish to offer in evidence the opinion or views of Judge Smith McPherson, part of the record in the United States District Court for the Western Division of the Western District of Missouri, in the case of Wagstaff vs. Great Western Life Insurance Company, and others. I want to offer the one first which is dated as filed in the records of the Federal Court on August 15th, 1908.

Mr. Landon: That would be objected to for the reason it would be incompetent as to any issue in this case; not within the issues and in no way binding upon the parties before this court. It is merely remarks of the court upon the conclusion of the arguments by counsel and the presentation of the facts in connection with the objections of the Philadelphia Life Insurance Company and stockholders of the Great Western to the confirmation by the court of the sale by the receiver, Jobes, of the business and assets of the Great West-

rn Life Insurance Company to the Kansas City Life Insurance Company.

Mr. Neel: What I had in mind was to give Your Honor an intelligent idea of the views of the court. This is the decree of the court and followed by the court's views which were filed August 27th, 1908, then the decree followed immediately after that.

The Court: It is not competent evidence. It may be proper for me to consider, however, in passing upon the law in this case, I suppose that opinion was printed the same as other opinions in the Federal Court.

Mr. Landon: I don't think this was printed.

The Court: I don't know whether it was or not, but it would have been perfectly proper to have printed it.

Mr. Lyons: It has in it the reasons leading up to the handling of these annuity certificates in the manner they were finally handled.

The Court: It is no more competent as evidence than any other printed report of an opinion. Just put that in your brief, that is the only purpose that can serve. Objection sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

Said document, so offered and rejected by the court, is as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. —.

J. M. Wagstaff, R. E. Brooks, J. E. Keel, H. E. Ellison, L. A. Sherrard, George C. Anderson, A. L. Driggs, F. D. Shallabarger, J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J. S. Engle, P. B. Witmer and Ira Puterbaugh, Complainants,

vs.

The Great Western Agency Company, the Great Western Life Insurance Company, O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall and Julia W. Van Laningham, Defendants.

162 *Order.*

Now on this fifteenth day of August, 1908, being one of the regular days of the April, 1908, term of said court, the above cause came on to be heard upon the application of the receiver for the confirmation of the sale of the assets, properties and business of The Great Western Life Insurance Company, in accordance with the bid of The Kansas City Life Insurance Company; the receiver, C. S. Jobes, Esquire, appearing in person and by his solicitor, E. L. Scarritt, Esquire; the Kansas City Life Insurance Company, a bidder, appearing by R. J.

Ingraham, its solicitor; the Philadelphia Life Insurance Company a bidder, appearing by W. F. Guthrie, its solicitor; the National Bank of Commerce, a creditor, appearing by H. C. Ward, its solicitor, and F. M. Pearl and other stockholders of the Great Western Agency Company and annuity certificate holders of The Great Western Life Insurance Company who are similarly situated, appearing by R. P. Waggoner and James W. Orr, said stockholders praying a postponement of said hearing, and representing to the court that the said stockholders and annuity holders were endeavoring to raise from the stockholders and annuity holders a sufficient fund to pay off all of the debts of the said The Great Western Life Insurance Company, and to meet all of its obligations and to rehabilitate and reorganize said company, and it appearing to the court that there are reasonable prospects of the accomplishment of the reorganization on such plan, and thereby secure to the creditors of said company the full payment of all of the debts or liabilities of said life insurance company.

It is therefore considered and ordered by the court that the further hearing of the application of said receiver to confirm the sale of said property and assets of The Great Western Life Insurance Company be and the same is hereby postponed and continued until Tuesday, August 25, 1908, at nine o'clock a. m., and

It is further ordered that if by said last named date the stockholders of The Great Western Agency Company and the annuity certificate holders of the said The Great Western Life Insurance Company shall present to this court a feasible plan for the reorganization and rehabilitation of the said The Great Western Life Insurance Company, and shall be able to pay all of its debts and obligations in full, then said stockholders and annuity certificate holders shall be permitted to proceed to said reorganization, and when accomplished to the satisfaction of this court, the properties and assets of said The Great Western Life Insurance Company shall be turned over and delivered to such stockholders and annuity certificate holders if they have acquired the capital stock of the said life insurance company and in accordance with the further order of this court.

It is further ordered that as a condition of the granting of such postponement that the re-organization committee, so called of The Great Western Life Insurance Company, shall give to the
163 receiver appointed in this cause an indemnifying bond in the penal sum of ten thousand dollars, conditioned for the payment of any and all damages which said receiver, as such, and the creditors of said life insurance company and the bidders at said sale, shall sustain if any and such bond having been presented to the court, it is hereby approved. The Philadelphia Life Insurance Company, one of the bidders at said sale, having been required to furnish a bond in the penal sum of two hundred thousand dollars for the faithful carrying out of its bid and the performance of the conditions thereof, having presented its bond, said bond is likewise approved.

(Signed) SMITH McPHERSON,
Judge."

Mr. Neel: Then I want to offer in evidence the remarks of the court dated and filed August 27th, 1908, by Judge Smith McPherson in the same case.

Mr. Landon: I make the same objections as heretofore.

The Court: Objection sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

Said document, so offered and rejected by the court, is as follows:

"Read Carefully.

Views of the Court.

Smith McPherson, Judge.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Kansas City, April Term, 1908.

No. 3367.

J. M. WAGSTAFF, F. M. PEARL and Others, Plaintiffs,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN LIFE INSURANCE COMPANY, O. L. VAN LANINGHAM, and Five Other Individuals, Defendants.

Thursday, August 27th, 1908.

Here is a bill in equity by complainants, as stockholders of The Great Western Agency Company, which corporation holds practically all the stock of The Great Western Life Insurance Company. A few years since the defendant, Van Laningham, had a contract with The State Life Insurance Company of Indiana, under which contract he was to be sole agent in some of the states west of the Mississippi River, and the contract seemed to be a very profitable one. After carrying on the business as the Western agent for some time, he formed a corporation, under the laws of Colorado, incorporating his business, and I have every reason to believe, set aside a lot of the stock, as so-called 'treasury stock,' for his own use and benefit, and sold other stock for promoting the concern, which promoter stock he sold at an extravagant figure, paying enormous dividends, partly out of his earnings under his highly advantageous contract with the Indiana company, and other extravagant dividends aside from the profits, namely, by the sale of stock. This was made so at-
164 tractive as to induce many men who look only to dividends, and never look to see what is in behind the stock, to become purchasers. The complainants herein seem to belong to that class. In addition to these extravagant dividends paid, partly by earnings

from the Indiana company, and partly by the sale of stocks at extravagant and unwarranted figures, something like eighty thousand dollars has been accumulated. At about that time Van Laningham, to further his exploits, conceived the notion of organizing a life insurance company, resulting in the creation of the defendant, The Great Western Life Insurance Company, under the laws of Missouri, capitalized at one hundred thousand dollars. Apparently, he took the eighty thousand dollars from the Agency Company and borrowed other moneys, twenty-one thousand dollars of The National Bank of Commerce of Kansas City, Missouri, and fifteen or twenty thousand dollars elsewhere, which somehow at some time has been paid, and paid for the stock of The Great Western Life Insurance Company, the defendant herein. A great scheme was to obtain policy-holders, and commencing about April, 1907, and doing business for one year, the enormous amount of twenty-four million dollars of policies were sold. It is conceded by all, that the policy holders are a high class of risks. There does not seem to be the slightest criticism upon its medical examiners or other- passing upon the risks. The attempt at all times being successfully made to eliminate doubtful risks. The entire first year's premiums were not only paid to agencies and for other expenses, but oftentimes twice that amount to obtain policies, and that money had to be raised from some source. Thereupon Van Laningham devised the scheme of issuing and selling annuity certificates, 500 in number, at the face value of one hundred and fifty dollars each. These certificate purchasers were not required to be policy holders, and it is as though two companies were organized, one to transact the life insurance business, and the other to engage in the annuity certificate business. After reciting several things of small and no importance, the obligation of these annuity certificates was to pay out of the earnings to the owner thereof an annuity during his life, and thereafter to his heirs or personal representatives, the proceeds of twenty-five cents for one thousand dollars of all insurance written by the company in the United States for fifty years from the date of the incorporation—the annuity to be determined by taking the aggregate of twenty-five cents per thousand dollars of insurance, ascertained at the end of each calendar year, and divided by 500, and the quotient obtained to be the apportionment of each of said shares, with an agreement that the first annuity shall not be less than 8 per cent upon the amount paid for the annuity certificate, and the certificate was made assignable.

Van Laningham seems to be a man of great push and energy, and full of devices, but if there is anything else that can be said in his favor, it has escaped my attention, and the ordinary vocabu-
165 lary would be exhausted to accurately present him for consideration. Nor, need I use language denunciatory or otherwise of the schemes hereinbefore briefly set forth. The 'Mississippi Bubble' and other schemes were fairly conversative, as compared with this. These annuity certificates, if carried out, would be a magnificient investment, and there was nothing wrong in their purchase. Not only did the company agree to pay the first year 8 per cent, but the twenty-four millions of insurance sold the first year warranted the

payment of 8 per cent to the certificate holders; and waiving lapses and assuming that the company for the next year would have done a like amount of business as for the first, the dividends for the second year would have been 16 per cent on the investment, and for the third year 24 per cent, and the fourth year, 32 per cent; and the fifth year, 40 per cent; and so on.

On the 18th of May, 1908, this court, Judge Pollock of the Kansas District presiding, decreed the Agency Company to be insolvent in accordance with the prayer of the bill, and appointed C. S. Jobes the receiver thereof. As that company owned all but eight shares of The Great Western Life Insurance Company's stock, he was ordered to take over, as receiver of the Agency Company, all of the assets of the Life Insurance Company, and on the 6th day of July, Judge Pollock presiding, the court, in accordance with the prayer of the bill decreed the insolvency of The Great Western Life Insurance Company, and broadened the receivership so that by direct terms that would be done by letter which had already been done in effect, namely, cover the assets of the Life Insurance Company. Thereupon, a sale of the Agency Company's assets, including what it owned in the Life Insurance Company, was ordered to be sold, and after due notice, by publication and otherwise, the sale took place, resulting in one bid by The Kansas City Life Insurance Company and another by The Philadelphia Life Insurance Company. Which bid to accept was an intricate question, and after a great deal of time given by the receiver, a very intelligent and active business man, and the Superintendent of Insurance of the State of Missouri, with the aid of others, it was determined that the bid of The Kansas City Life Insurance Company was the better bid, and a confirmation thereof was asked. Judge Philips, the resident judge, being out of the state, and Judge Pollock being absent from the United States, I was assigned to take the matter up and proceed to a conclusion.

August 15th, 1908, the matter coming on for hearing, the Kansas City Life Insurance Company asking for a confirmation of its bid, and the Philadelphia Life Insurance Company insisting that it was the better bidder, a committee of stockholders of the defendant, The Great Western Life Insurance Company, appeared and asked that neither bid be confirmed, that both bids be set aside, and that the old stockholders be allowed to pay the debts and re-organize the company, putting it upon a sound basis. I entertained the views then, and still adhere to them, conceded to by all fairly disposed men, that a debtor at any and all times until an absolute sale has taken place shall be allowed to remain the owner of his and its
166 property, after the payment of his or its debts, and, therefore, I announced on the 15th of August that if the reorganization committee, representing the stockholders, would put all promises to one side and not come before the court with obligations, but would appear with the actual cash, that the reorganization of the company would be allowed.

Two days have been consumed here in argument. Many of the propositions discussed not being substantial ones, and, only a few going to the merits of any proposition. The court has had in mind

from the first, and still rigidly adheres thereto, that of all p
or concerns to be protected, the policy holder stands first. Li
surance is a very important phase of the business of the countr
great per cent of all our people carry life insurance. Some,
end that their indebtedness may be cared for at their death
their good name and reputation preserved; another large per c
people who have an earning power and carry insurance, do so
end that an estate may be left to those dependent upon them.
to trifle with the rights of policy holders, is to trifle with the
of a large per cent of the people of the country. This can ne
allowed by any right thinking official; and the courts, particu
will see to it that such rights are preserved when questions i
ing the company are presented for consideration. And so
been the view of the court during all these several days of argu
to see to it that the policy holders are protected; and, by the
herein they are protected, and their policies preserved in a
tegrity. The rights of other creditors sink into comparative ins
cance, as compared with the rights of policy holders. Of cours
other creditors ought to be and should be paid, if it is possible
so; and, in protecting these creditors a great difficulty in the
of the court has arisen—and, particularly with reference to the
of these annuity certificate holders. It has been suggested, th
transacting that phase of the business that such acts were ultra
The Superintendent of Insurance for Missouri, seemed to be in
about it, and wavered to and fro with reference thereto. Fr
letter from him presented to the court, written in August, 190
discussing the matter, he expressed a doubt as to the propriety o
class of business; but, then said that it might be continued
the first of September following, after which that line of bu
was to cease. He now insists, as I understand him, that n
shall be deposited with him to cover these annuity certificates
this is utterly impossible. The bids of the Kansas City Lif
surance Company and The Philadelphia Life Insurance Compa
neither of them would furnish a dollar for the stockholders
annuity certificate holders; and the reorganization committee,
makes an offer better than either of those bids, will not ag
carry the annuity certificate holders. And, if that phase
business was ultra vires, then it is beyond the scope of the p
of the Superintendent of Insurance of Missouri; and, he h
more right to insist upon the deposit of money for tha
167 pose, than he would for the deposit of cash for the mo
or other indebtedness of any other corporation. And,
business were not ultra vires, then he had no right to insist th
business should terminate on September 1st, 1907. Whethe
phase of the business was ultra vires or not, this court at this
does not determine. If it were ultra vires, possibly an estoppel
arise—from the fact of a payment of a dividend of 8 per cent, re
by the holders of such certificates. These questions are passed
side, and, are mentioned to show the difficulties with which the
has had to contend. An 8 per cent dividend was paid for th
year—not only because a promise was made in the certificate

dividend of at least 8 per cent, but, because the sale of twenty-four millions of insurance called for the payment of an 8 per cent dividend. But, that 8 per cent dividend was paid from moneys, not a farthing of which was earned; and, without the slightest doubt in my mind could be recovered back, because paid out of the principal and not out of earnings. So that, the annuity certificate holders while being creditors to a certain extent, are likewise debtors; and, the equities of such holders dwarf into insignificance. At least, dwarf so that they are without substantial merit, as compared with the rights of other creditors. And I am not much persuaded with the arguments—consuming much of the time for two days—as made in behalf of these certificate holders. The suggestion of the Superintendent of Insurance for the State of Missouri, is that four hundred and fifty thousand dollars of money must be deposited—intending thereby to protect the three hundred thousand dollars of certificate holders. This cannot be considered for a moment. The suggestion is made here in argument, that these certificate holders should be allowed to cash their certificates in. And, this cannot be considered for a moment, for two reasons. One is, that they hold no such obligations—the other reason is, that neither of the bidders proposed to pay such an amount as would care for them; and, the reorganization committee of the stockholders have not offered to do so, and could not afford to do so. So that, if such a notion should be entertained there would be a collapse of the whole situation, and neither they nor the stockholders would receive a farthing. It was not suggested in argument—but, I have entertained the notion for a time that prehaps a present money worth of these certificates could be ascertained. But that is impossible, because no man could tell the number of lapses and no man can tell the amount of insurance that will be sold from time to time. So that, giving the certificate holders the benefit of all alleged merits—resolving all doubts in their favor—they are treated with great consideration when given the option for a fixed period of time to accept the proposition of the stockholders—who, along with them, are creditors until the debts have been paid. And such will be the decree. If they want to retain the dividends thus paid them without warrant or right, and allow their certificates to be cancelled by expiration of time, very well; and if they want to exer-
168 cise the right of stockholders by the payment of other moneys to help make this impaired condition good, they may have the right to do so.

It is to be further added: That as these three hundred thousand dollars of certificate holders, the half thereof or more have already agreed to surrender their certificates and occupy the position of stockholders. Objection has been made, that this is requiring them to pay two dollars for one; but, this is not so. The Superintendent of Insurance for the State of Missouri holds—and, without much consideration by the court, I think rightly holds—that the capital stock of the company cannot be increased beyond the one hundred thousand dollars; but, as of course, the stock can be made worth two for one by the payment of money accordingly;

and, it is for the remaining one hundred and fifty thousand dollars of certificate holders to elect whether their rights as creditors shall be cancelled, retaining the money which could be recovered back or, whether they now come in and help make good for the benefit of other creditors.

The receiver in person, in open court, by quite an extended statement and argument, impressed the court that out of the thirty thousand dollars now held by him, certain policy holders should be protected. This thirty thousand dollars has been raised—which he says he holds as a trust fund—no part of which in money or by securities has been deposited with the Superintendent of Insurance for Missouri—by the payment of second year premiums since May 19th, 1908, at the time the receiver took charge of the affairs. He says that Judge Pollock orally promised that such funds should be regarded as held in trust; and that he, the receiver, by correspondence—not by letter, but in spirit—gave such policy holders, aggregating $710,000.00, the right to believe that they could exercise the election if their policies were not properly cared for to surrender the same and withdraw such premiums thus paid for the second year. The showing made by the receiver is quite indefinite. Such promises, if made, were only made by correspondence and the correspondence with but one policy holder has been disclosed to the court—with the statement, however, that a large number of like letters were sent. The correspondence with the one policy holder shows that he was in doubt as to his position, and wrote the receiver to ascertain what it would be. The policy holder was placed in the position of allowing his policy to lapse; or if he paid the premium, of creating a doubt in his mind as to whether he would be properly cared for by re-insurance. The proposition argued between the policy holder and the receiver was with reference to re-insurance, and nothing else. Several death claims since the receivership have arisen, and, the decree this day made is for the payment of all death claims not in dispute as to the liability; and, it is more than possible that some one of these death claims now to be paid are to the beneficiaries under a policy, the second year's premium of which has been paid under this so-called 'trust
169 agreement.' But if this be not so, to now allow such persons to withdraw their premiums would be to allow them to have had the benefits of insurance since the 19th day of May, without cost and without charge; and, as of course, Judge Pollock never promised that; and, as of course, the receiver could have had no such thing under advisement; and, as of course, this court will now not sanction a proposition of that character. But, to the end that Judge Pollock's alleged promises be made good—and to the end that the promises of the receiver may be literally construed, and construed according to conscience and equity and fair dealing, and not according to the terms of his correspondence—the court will give those policy holders, aggregating $710,000.00 as is said, the right to make the election of surrendering their policy to the company, within a short time after notice to them, and of withdrawing such parts of the premium thus comprising the thirty thousand dollars as are

unearned—treating such policies in harmony with policies for fire insurance, and allowing the same to be surrendered—not at short rates as has been suggested; but, allow them to divide the time, and receive back those parts of the premium not yet earned by lapse of time. And, to make that good, the company as reorganized will be ordered to forthwith file a bond, properly conditioned, with ample security, to be approved by the clerk of this court, for the payment of such unearned premiums upon demand, upon the surrender of such policies.

As before stated, the capital stock of this company was one hundred thousand dollars. It has been in receivership since the 18th day of May, 1908. Assuming that the receivership of the Agency Company was in spirit and effect the receivership of the Life Company—but which in terms was not declared until the 6th day of July; but, counting it from the 18th day of May—the receivership has covered 100 days of time, or three months and one third. During this time not a dollar of new business has been transacted. Nothing has been done, other than to conserve and preserve the status, as best that could be done. For these services, in round numbers, twenty-four thousand dollars of bills are presented; or, one-quarter of the entire capital stock—the receiver asking $10,000.00 for himself, and $7,500.00 for counsel, in addition to many other claims. How it can be expected that this court will allow such bills, I cannot understand. The court is dealing with these funds as a protector of the creditors, including the stockholders—who are creditors after the debts are paid. And if such allowances should be made, again not only would the reorganization scheme collapse; but, the bids of The Kansas City Life Insurance Company, or the Philadelphia Life Insurance Company, if approved, would not realize the money to make such payments. And if allowed, the creditors, other than the stockholders, would have to have large sums deducted from their claims in order to make such payments. How can I believe that the receiver of this kind of concern, for three and one-third months, could earn that amount. I want to be, and will be, not only fair but liberal in making compensations—believing at all times that 'the laborer is worthy of his hire.'

Out of 1,000 shares of stock of the Great Western Life Insurance Company, 492 shares are held by the Agency Company, leaving but 8 shares to be held by individuals. Of these 492 shares held by the Agency Company, approximately one-half of them were pledged as collateral security for a loan of $21,000.00 made by The National Bank of Commerce of Kansas City, Missouri, which bank has not as yet been paid, and which stock it holds as such collateral. That debt must be paid and that stock lifted. The remaining one-half, approximately, of the capital stock is now held by Mr. Jobes, as Receiver. The decree will be, that the National Bank of Commerce be paid $21,000.00, and the stock thus held as collateral be assigned to the chairman of the reorganization committee, to be held by him in trust for those who come in, proportionately to their holdings. The stock now held by the receiver must likewise be transferred to the Chairman of the Re-organization Committee, to be held in like

trust. But, to accomplish that, in addition to paying the National Bank of Commerce $21,000.00, all such stock, being the entire capital stock of the Company less the 8 shares held by individuals will be sold by the Receiver, at private sale, to the Chairman of the Re-organization Committee, at an upset price aggregating the expenses of the receivership. This is the only feasible way of bringing this about, unless, I deduct from the amounts due the creditors such a sum as will cover the expenses of the receivership. I have thought out many plans, and can arrive at no other conclusion that will bring this about, except by driving the re-organization from the court and accepting one of the bids, and then scaling down the credits justly due other people and other concerns.

It is said that Judge Pollock promised that there should be an allowance made for solicitors' fees for lodging the bill of complaint herein. As of course, what Judge Pollock said was that an allowance would or would not be made, dependent upon the character of the services. Not but that such services were performed; but whether the case falls within the rule laid down by the Supreme Court of the United States with reference to such allowances. But that suggestion was made to me at the very close of the two days' argument, and without any showing, either, as to the value of such services, or as to whether such services have been for the benefit not of the plaintiffs, but of the estate; and, that matter is passed to one side, for consideration at a later time.

A receivership of the Agency Company, brought about by Van Laningham, was established in some court in the State of Colorado. Something has been said about that, as to whether this court, from the assets on hand or to be realized from the Life Insurance Company, should set aside a sum to be paid to meet those expenses. A like receivership was brought about in one of the state courts at Kansas City, Missouri. After conferences, as I understand it, with the Superintendent of Insurance of Missouri, and perhaps
171 the Attorney General or one of his assistants, and with other parties in interest, the request was made by this court, Judge Pollock presiding, that the state court of Kansas City, Missouri, should surrender its receivership, to the end that all matters could be adjudicated in this court in the one case, and, that court cheerfully and gladly consented; and, I am advised that the same thing practically is true in the case in the state court of Colorado. The taxable costs will be paid from the proceeds arising from this case, but, other matters are passed to one side.

One hundred and thirty thousand dollars, in obedience to the requirements of this court, have been deposited in the Commerce Trust Company of Kansas City, Missouri, by the Reorganization Committee. To that will be added the sums in the Receiver's hands; and, those moneys will be paid out by an officer of the bank, forthwith, in the satisfaction of the claims of the several creditors to be covered by the decree herein.

I have thus noticed, without much elaboration, the several questions covered by argument; and, such are my conclusions, with the undoubted belief that substantial justice has been done to all

It is done with the undoubted belief that the policy holders are absolutely protected, the creditors will be paid in full, one hundred cents on the dollar, and, the annuity certificate holders have been given the benefit of all doubts, and are placed in a better position than they have the legal right to demand. The capital stock of the Company will be much more than made good. Van Laningham is entirely eliminated from the situation. The Re-organization Committee suggest business men of high character and integrity to carry out its affairs, and, if any doubt should arise later on with reference to any of these matters, this court will see to it that such matters are summarily corrected; and to that end, the court will insert a reservation clause in the decree, retaining jurisdiction not only of all of the subject-matters of the case, and over all parties complainants and defendants now on the record, but with the right to bring in such other parties from time to time as the necessities or desirability of the situation as it may arise may suggest."

Mr. Neel: I desire to offer in evidence the original certified copy of the original bill of complaint and pleadings and orders in the case of Wagstaff vs. Great Western Agency Company and Great Western Life Insurance Company, heretofore referred to, and have marked the word "out" at the top of such pages of matters that we don't want to go in. That is, because we thought they were immaterial.

Mr. Landon: If this certified copy of the record is offered we want to make the specific objection to the introduction in evidence of this portion of this document which pertains to the order of court purporting to have been made on the 24th day of July, 1908, referring to the Honorable Willard P. Hall, Master in Chancery,
before whom the issues therein shall be made up, the inter-
172 vening petitions heretofore filed, and to the order to the effect that all persons having claims of any character against the Great Western Agency Company and the Great Western Life Insurance Company, shall present the same in due form before said Master, and that they shall be duly presented to the Master for hearing on or before the first day of October, 1908, or the same will be forever barred, for the reason it is in no way binding on the parties in issue in this case; for the further reason that subsequently, and on the 27th of August, 1908, and prior to the time as fixed by this decree, the court made another order disposing of the entire matter and turning back the property and assets of the company to other directors of the same company, and the order superseding this order of July 24th, 1908; and for the further reason that this order in no way affected or was intended to affect the certificate holders mentioned and named in this case, and could have no force or effect upon the holders of such certificates.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said documents, so offered and introduced in evidence, marked Exhibit D, are in words and figures as follows:

EXHIBIT "D."

"In the Circuit Court of the United States for the Western Distr
of Missouri.

In Equity.

No. —.

J. M. WAGSTAFF, R. E. BROOKS, J. E. KEEL, H. E. ELLISON, L.
Sherrard, George C. Anderson, A. L. Driggs, F. D. Shellabarg
J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J.
Engle, P. B. Witmer, and Ira Puterbaugh, Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTE
Life Insurance Company, O. L. Van Laningham, E. L. Biersmi
L. N. Paquin, James E. Smith, Joseph T. Kendall, and Julia
Van Laningham, Defendants.

To the Judges of the Circuit Court of the United States for t
Western District of Missouri:

J. M. Wagstaff and R. E. Brooks, *each* citizens and reside
of the State of Texas, and J. E. Keel, H. E. Ellison, L. A. Sh
rard, George C. Anderson, A. L. Driggs, F. D. Shellabarger, J.
Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J. S. Eng
B. P. Witmer, and Ira Puterbaugh, each a citizen and resident
the State of Kansas, brings this, their bill, against the Gr
Western Agency Company, a corporation organized under the la
of the State of Colorado and a citizen of said state, and The Gr
Western Life Insurance Company, a corporation organized und
the laws of the State of Missouri and a citizen of said state, a
O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James
Smith, Joseph T. Kendall, and Julia W. Van Laningham, each
citizen and resident of the State of Missouri.

173 The said Great Western Life Insurance Company has
principal office and place of business in the Western Divisi
of the Western District of Missouri, at Kansas City, and the s
O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James
Smith, Joseph T. Kendall, and Julia W. Van Laningham each a
all citizens of Kansas City, in the Western Division of the West
District of Missouri, and thereupon, your orators complain a
say—

That they institute this suit in their own behalf and in beh
of all persons similarly situated, who your orators pray may
permitted to become parties to and participate in this litigation
they so desire and are willing to contribute their just proporti
of the expenses of this proceeding—and complaining of the ab
named defendants. The Great Western Agency Company, T

Great Western Life Insurance Company, O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall, and Julia W. Van Laningham, allege and say that—

1. Your orators, J. M. Wagstaff and R. E. Brooks are *each* citizens and residents of the State of Texas, and your orators, J. E. Keel, H. E. Ellison, L. A. Sherrard, Geo. C. Anderson, A. L. Driggs, F. D. Shellabarger, J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J. S. Engle, P. B. Witmer, and Ira Puterbaugh are each and all citizens and residents of the State of Kansas and are stockholders of the Great Western Agency Company as hereinafter stated.

2. That The Great Western Agency Company is a corporation organized under the laws of the State of Colorado, but that its principal assets are now within the Western Division of the Western District of the State of Missouri, at Kansas City;

That the Great Western Life Insurance Company is a corporation organized under the laws of the State of Missouri;

O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, and Joseph T. Kendall are each and all citizens and residents of Kansas City, Missouri, and in the Western Division of the Western District of Missouri, and are hereinafter (for the sake of convenience) referred to as "The personal defendants;"

Julia W. Van Laningham is a citizen and resident of Kansas City and the Western Division of the Western District of Missouri, and is hereafter referred to as "Julia W. Van Laningham."

The Great Western Agency Company has assets of the value of many thousands of dollars in the Western Division of the Western District of Missouri, practically all of its assets being within said Western Division and Western District, and it now has no place of business and no substantial assets except in said division of said District.

The Great Western Life Insurance Company has its principal office and place of business at Kansas City, Missouri, in the Western Division of the Western District of Missouri, at which
174 place practically all of its assets, worth many thousands of dollars are kept.

The said Great Western Agency Company and The Great Western Life Insurance Company each have assets in said division of said district worth more than two thousand ($2,000.) dollars.

The amount in controversy in this cause exceeds the sum of two thousand ($2,000.) dollars, exclusive of interest and costs. Your orator, J. M. Wagstaff, owns stock in said Great Western Agency Company of the par value of more than seven thousand ($7,000.) dollars, and your orator, R. E. Brooks, owns stock in said Agency Company of the par value of more than three thousand ($3,000) dollars; your other orators own stock in various amounts of the par or face value of from one thousand ($1,000.) to one hundred and seventy ($170.) dollars; your orators combined, however, own stock of the face or par value of more than fifteen thousand eight hundred and fifty ($15,850.) dollars, for which they actually paid into said

Great Western Agency Company more than twenty-five thousa
($25,000.) dollars.

3. Your orators, complaining, state that all of the above name
personal defendants combining, conspiring and colluding with ce
tain other persons to your orators unknown, but who your orato
allege acted for said personal defendants with the purpose and inte
of cheating and defrauding these complainants and divers an
sundry other persons, did the various wrongful acts as hereinafte
set forth.

Your orators state and show that they had no knowledge of th
various wrongs and frauds hereinafter complained of until afte
the same had been consummated and that they did not know o
said wrongful or fraudulent acts until shortly before the institutio
of this suit, and were themselves without fault in the premises an
that by means of the various wrongful and fraudulent acts herei
after complained of, the moneys of your orators have been misa
propriated, misapplied and used and invested as hereinafter s
forth, so that without the aid of a court of equity, it will be impo
sible to follow said funds or the proceeds hereof, or to restore yo
orators to their rights, wherefore, your orators invoke the powe
of this court of equity to the end that their rights may be preserve
and saved unto them.

4. Your orators complain and state that on or about the 2
day of June, 1906, said personal defendants, pursuant to their pla
scheme and conspiracy, did, in form, comply with the laws of th
State of Colorado governing the matter of incorporations by filin
a certain paper with the officers of said State of Colorado havin
control of such matters, which resulted in their being issued by sa
officers a certain charter or articles of incorporation, whereby the
was created, so far as the law of Colorado incident to such matte
could do so, a corporation having as its name "The Great Weste
Agency Company," authorizing and empowering said corporation t
act as a general and special agent for insurance companies, an
particularly life insurance companies and other corporation
175 and to solicit business of the kind and character carried o
by such insurance companies, and to do divers and sundr
other things not germane to the matters involved in this bill, b
which will more fully appear by certified copies of said Articles o
Incorporation which will at the proper time be presented to th
court.

5. Your orators further complain and show that said corporatio
has a pretended capital stock of two million Dollars ($2,000,000
which was represented to be fully paid up in lawful money of th
United States or its equivalent; that said stock was divided into tw
hundred thousand (200,000) shares, of the face value of te
($10.00) dollars per share; that said personal defendants create
themselves the officers of said company and caused said stock to b
issued as follows:

Unto the said O. L. Van Laningham 1 share;

Unto E. L. Biersmith 1 share;
Unto L. N. Paquin, 1 share;
Unto James E. Smith, 1 share;
Unto Joseph T. Kendall, 1 share;

That none of said personal defendants paid anything for said five shares of stock, but that some one or all of them contributed or pretended to contribute unto the treasury of said Company, the sum of fifty ($50.) dollars; that said personal defendants, acting for themselves but in the guise of officers for said Agency Company, then pretended to convey unto the said O. L. Van Laningham the remaining one hundred and ninety-nine thousand nine hundred and ninety-five (199,995) shares of the capital stock of said Agency Company, of the face value of one million nine hundred and ninety-nine thousand nine hundred and fifty ($1,999,950.00) dollars, for the pretended consideration of the conveyance or pretended conveyance to said Company of a certain agency contract or pretended agency contract existing or claimed to exist between the said O. L. Van Laningham and the State Life Insurance Company of Indiana by which the said O. L. Van Laningham was authorized or pretended to be authorized to solicit insurance for said State Life Insurance Company of Indiana in certain states.

That when the transaction last aforesaid was completed, said Company was in form incorporated; it had a name, and for assets it had not to exceed fifty ($50.) dollars in money contributed or pretended to have been contributed as aforesaid, and said agency or pretended agency contract—that said agency contract had no actual or substantial value whatever and was subject to be revoked at any time.

6. Having thus organized said corporation with its stock pretended to be paid in full, the said personal defendants, conspiring to cheat and defraud the public generally and these plaintiffs in particular, claimed and represented that the said stock had been actually paid up in full in lawful money of the United States or its full equivalent.

That they thereupon did proceed to sell more than seven
176 hundred thousand ($700,000.) dollars worth at par value of said stock, but that at the time of selling same they represented to these plaintiffs and to the public generally, and to all persons purchasing said stock, that it was fully paid up, and that said Company was in a prosperous and flourishing condition; that said stock was worth more than its par or face value—all of which said representations were believed and relied upon by your orators and other purchasers of said stock; that by the devices aforesaid, these plaintiffs and other purchasers were induced to purchase said stock at a premium of about sixty (60) per cent, and that by the means aforesaid there was collected more than one million ($1,000,000.) dollars.

7. Your orators further show that large parts of said sum of money so as aforesaid received, have been by said personal defendants misappropriated, misapplied and converted to their own use. That the amount so misappropriated while not known to your orators

with exactitude, is, as they are informed and believe, and therefore assert the same to be true, upon information and belief, approximately four hundred thousand ($400,000.) dollars.

8. Your orators further show that after the organization of said company, said personal defendants as officers thereof so mismanaged and misconducted said business and so violated the conditions of said agency contract with said State Life Insurance Company of Indiana, and were guilty of such wrongful and fraudulent acts that said contract was violated and was cancelled and annulled in the month of —, 1907, or about that time, and that thereafter said Company ceased to any manner conduct any part of the business for which it was organized, or any lawful business whatsoever.

9. Your orators show that substantially all of the money that ever came to said personal defendants, as the officers of said agency company, were the result and proceeds of said fraudulent sales, and that only sums inconsiderable in amount and small in number were received as the fruits of the selling or placing of policies of insurance as provided in said contract.

10. That said defendants only engaged in the business of writing life insurance as a cover of their various fraudulent intents, purposes and acts, and as a mere pretense that they were engaged in lawful and profitable business. That they did not, through the writing of life insurance, make sufficient moneys to pay the actual expenses incurred in running said company; that notwithstanding this was the condition, said personal defendants, as officers of said company, declared on or about the *month* of January, 1907, a pretended dividend of twenty-five (25%) per cent on the capital stock then issued, and officially reported to the holders of capital stock that said 25 per cent represented the net earnings of the company for six months. Said representations were made in circulars over the signature of "The Great Western Agency Company, by O. L.
177 Van Laningham," which said circular was sent out to the various stockholders and the public generally, at the instance and with the knowledge of all of said personal defendants, and bore date of December 31st, 1906. That, in truth, no dividend had been earned, but that said pretended dividend was paid, or so far as paid, was paid out of the moneys collected from the sales of stock, and that a large portion of said dividend was received by said personal defendants upon stock held in their name and was used by them, and that the declaring of said dividend was one of the means used by said personal defendants to fraudulently divert and embezzle the funds of said company for their own use and benefit, and was done for the further purpose of inducing these complainants and the public generally to believe said stock to be of great value and to induce them to purchase the same, and that because of said representations, which were believed and relied upon by your orators and others similarly situated, investments in said stock were made and large sums of money paid therefor.

11. That, while said stock was being sold and before a complete disposition of the whole of the capital stock aforesaid was had, said agency contract was canceled and terminated by the State Life Insurance Company of Indiana; that with the destruction of said contract came the destruction of all of the assets of said company that existed at the time the sale of said stock was begun, save and except $50 in cash contributed as aforesaid, and that there was as a consequence, left only as assets such portion of the moneys as had been received from the sales of capital stock and not dissipated, and said company was without business or assets of any other kind.

12. Your orators further show that at or about the time of the cancellation of said contract, towit, on or about the first day of March, 1907, said personal defendants, pursuant to and as a part of their fraudulent scheme aforesaid, incorporated themselves as an insurance company—claiming and pretending to have complied with the laws of the State of Missouri, and gave to said company the name of "The Great Western Life Insurance Company"—it being their purpose and intent to carry on their various fraudulent schemes and devices and to use the form of an organization for the purpose of consummating their said devices, frauds and conversions.

13. Your orators further show that in the further carrying out of the fraudulent schemes and devices, the said personal defendants caused themselves to be created the officers of The Great Western Life Insurance Company, as they had previously caused themselves to be created the officers of the said Great Western Agency Company; that to satisfy the statutory requirements of the State of Missouri governing life insurance corporations, said personal defendants, without the knowledge or consent of your orators, took from the moneys paid for the stock of said agency company and paid to the officers of
178 the State of Missouri a sum sufficiently large to satisfy the statutes of the last named state in that particular, which sum was one hundred thousand ($100,000) dollars; the capital stock of said last named life insurance company being one hundred thousand ($100,000.00) dollars divided into one thousand (1,000) shares of the face value of one hundred ($100) dollars per share; that the moneys so taken were in the hands of said personal defendants as the officers of said agency company, and was held by them as trustees for the benefit of your orators and persons similarly situated, since a trust had resulted in favor of your orators and persons similarly situated, because of the wrong and fraud, by and through which said personal defendants became the custodians of said money.

Your orators cannot with certainty state what disposition was made of the other nine (9) shares of capital stock of said insurance company, but upon information and belief alleges that five (5) of said nine shares were issued to said personal defendants, and that the remaining four (4) were issued to certain other persons to qualify them to act as officers or directors of said company, but that all of the capital stock of said company was in fact paid for out of the moneys in the hands of said personal defendants, and which they held in trust for the benefit of your orators and persons similarly situated.

14. Your orators further show that having conformed to the laws of said State of Missouri, so far as to obtain the issuance from its proper officers of the charter of The Great Western Life Insurance Company, and having made themselves officers of said life insurance company named as aforesaid, the said personal defendants in the still further carrying out of said fraudulent schemes and devices, caused to be issued to them the capital stock of said last named life insurance company, as follows:

To the said O. L. Van Laningham	199 shares
To said Paquin	198 shares
To said Biersmith	198 shares
To said James E. Smith	198 shares
And to Jos. T. Kendall	198 shares
Making a total of	991 shares

of the capital stock of said Great Western Life Insurance Company, that said shares were pretended to be held by them as trustees for the benefit of said Great Western Agency Company; that what disposition has actually been made of the same is to your orators unknown, the capital stock consisting of one thousand (1,000) shares.

15. Your orators further show that the use of the moneys paid by your orators and others similarly situated, in the manner last aforesaid, was fraudulent ultra vires and beyond the corporate powers of said agency company.

16. Your orators further show that by reason of the matters and things aforesaid, all of the moneys aforesaid were, by reason
179 of the mala fides and fraud aforesaid, a trust fund in the hands of said personal defendants for the benefit of your complainants and other persons similarly situated, to-wit, those who, like these complainants, contributed to said fund by buying the stock of said agency company.

Your orators further show that said personal defendants have further mismanaged the affairs of said insurance company by issuing policies of insurance without consideration in the way of premiums and without adequate consideration in the way of premiums, and have paid large and unreasonable commissions to agents, and have otherwise mismanaged said company, and wasted, dissipated and misappropriated its funds.

17. Your orators further show that to further wrong and defraud themselves and others similarly situated, and divers and sundry other persons, and with a view of impairing and destroying what value there was or might be to said Great Western Life Insurance Company and the assets thereof, the said personal defendants, as the officers of said last named company, caused to be issued and sold certain so-called "anuity certificates" or annuity contracts, which contracts were issued in excess of the powers of said Great Western Life Insurance Company, and in violation of the laws of the State of

Missouri, and rendered its charter liable to forfeiture, the issuance of which annuity contracts caused to be paid into the hands of said personal defendants as the officers of said Great Western Life Insurance Company, large sums of money, to-wit, the sum of three hundred and thirty thousand ($330,000.00) dollars.

18. Your orators further show that when the matters and things set forth in the last paragraph of this bill relative to the issuance of said annuity certificates came to the knowledge of the superintendent of insurance of the State of Missouri, he took action to the end of declaring that such certificates were impossible to be issued lawfully by said Great Western Life Insurance Company and made further official investigation and found that the real title of the stock of said last named insurance company was in said agency company, and declared that the stock of said insurance company could not be so held lawfully, and required that as a condition of the said Great Western Life Insurance Company being permitted to do business in the State of Missouri, that such corporate ownership of stock should cease.

19. Your orators further show that in order to still further carry out their scheme of wrong and fraud, the said O. L. Van Laningham, on or about the 18th day of March, 1908, caused to be instituted in the District Court of City and County of Denver, State of Colorado, an action entitled "O. L. Van Laningham vs. The Great Western Agency Company, in which said suit it was alleged substantially that the said corporation was authorized by its charter to act as general or special agent for insurance companies and other incorporations and persons, and to solicit business for such com-
180 panies; to loan money for persons or corporations; in the course of the business of this company to acquire by purchase or otherwise property, and to invest its funds, and generally to do any and all such lawful acts, and to possess all such lawful powers as are in any manner incident to the objects, purposes and business of this company; that the capital stock of said company has been lawfully paid in cash and by sale and transfer to it of certain personal property consisting of furniture and fixtures and a general agency contract with the State Life Insurance Company of Indiana, making the defendant company the general agent for the State of Nebraska, Kansas, Oklahoma, Texas and Indian Territory; that a large amount of the capital stock which was issued to the owner of said general agency contract was donated to the treasury of said company, and a large part thereof sold to various persons scattered throughout the said states and territories; that the board of directors of the defendant deemed it advisable to cancel said contract, and that said action was approved by the stockholders, and that thereafter the company invested all its funds in the purchase of nine hundred and ninety-one (991) shares of the capital stock of The Great Western Life Insurance Company, which stands in the name of the directors and trustees for said company; that after the purchase of said life insurance company's stock, it wholly ceased to do or prosecute any business, or to exercise any of

its powers or functions, and now exists only as a holding company, and derives its only income and profit from the dividends of the stock of the life insurance company; that the superintendent of insurance of the State of Missouri has made a ruling that the defendant company could not legally be permitted to own and hold stock in the insurance company and required that the defendant company sell and dispose of its stock so that the insurance company would not be directed and controlled by the defendant in its corporate capacity. That the defendant company paid at the rate of one hundred ($100.00) dollars per share for the stock of the insurance company and it was alleged in said suit, upon information and belief, "that the said stock is now worth upwards of two hundred and thirty-one ($231.00) dollars per share, and that if a sale of said stock should be ordered at this time it would be a great sacrifice owing to the financial depression existing at this time, and that the majority of the board of directors of the defendant company are more interested in the success of the insurance company than in the financial prosperity of the defendant, and are inclined to at once comply with the requirements of the superintendent of insurance of the State of Missouri; that the defendant company is indebted to various banks, corporations and individuals in large sums of money, aggregating approximately sixty thousand ($60,000.00) dollars, in valid and subsisting claims, while the other corporations and individuals claim to be creditors of the defendant company in large sums of money, the validity of which is disputed by the defendant company—

181 that, upon information and belief, the only assets of the defendant company other than the said stock of said insurance company, are certain notes and accounts which do not exceed in value the sum of twenty thousand ($20,000.00) dollars; that various parties hold stock which was paid for by their notes, and said parties insist upon their pro rata share of the proceeds to be derived from a sale of the assets of the defendant company, and that a multiplicity of suits and irreparable loss is likely to occur to the stockholders; that the organization has ceased to do business for which it was organized, and many debts due for months, some of them exceeding one year, have been left unpaid; that by reason of the ruling of the superintendent of insurance of Missouri and on account of the indebtedness and the controversy between the defendant company and the persons holding stock who are not legally entitled to hold such stock and by reason of the great danger to the principal asset being sacrificed at a forced sale, the plaintiff herein stated his belief that it is for the best interest of all the directors and stockholders that the business should be entirely liquidated."

In said suit it was prayed "that a receiver be appointed by the court to take charge of and preserve the property of the defendant company and dispose of the same to the best advantage and for the best interest of the creditors and stockholders of the same company under the supervision of the said court; that all of the creditors and stockholders of the defendant company be notified by said receiver of his appointment, and that all matters in dispute between the creditors and the company or the stockholders and the company shall be

in due time determined by said court or by the receiver under proper orders of the court and subject to review by the court; that under proper orders of said court the assets of the defendant company be reduced to money and distributed:

1st. To the payment of the costs and expenses of this proceeding;

2nd. To the payment of its just debts; and,

3rd. To the legal stockholders as their interest shall appear."

Said petition was verified by O. L. Van Laningham as follows:

"STATE OF COLORADO,
City and County of Denver, ss:

O. L. Van Laningham on oath deposes and says that he is the plaintiff in the above entitled cause; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his knowledge except as to matters and things therein stated on information and belief, and as to those he believes it to be true.

O. L. VAN LANINGHAM.

182 Subscribed and sworn to before me this 18th day of March, 1908. My commission expires Dec. 12, 1908."

GEO. B. DRAKE.

On the same day the defendant entered its appearance and filed its answer, reading as follows:

"Now comes the defendant above named, by William Thompson, its attorney and attorney in fact, duly empowered by the defendant by proper resolution to act in its behalf, and answering the complaint of the plaintiff says that it admits the truthfulness of all the material allegations in said complaint alleged.

WILLIAM THOMPSON,
Attorney and Attorney in Fact for Defendant."

20. That said suit was collusive and said answer was filed by the said Thompson (who was then and is now acting as the attorney of said O. L. Van Laningham and said Insurance Company), by previous arrangement and agreement between himself and the said plaintiff in said suit, and by arrangement and agreement with the other personal defendants, and that by virtue of said action one Swain, an employee and creature of the said Van Laningham, and said other personal defendants, was made receiver of the assets of said Agency Company; that said suit has been carried on collusively between the parties thereto and said receiver, and is being used as a mere cover and as a mere protection for the said personal defendants in the carrying out of their various frauds as herein set forth; that said receiver only gave a bond of twenty thousand dollars, and that the amount of said bond was agreed to by the said Van Laningham

and said personal defendants, although, on the 23rd day of February, 1907, the said Van Laningham had filed with the Secretary of State of the State of Colorado a written and sworn statement wherein he alleged that the net assets of said Agency Company were in excess of the sum of two million ($2,000,000) dollars, and although said Agency Company had, between the date of the making of said instrument and the appointment of said receiver suffered no actual loss except such sums as may have been purloined, misappropriated or embezzled by said personal defendants.

21. Your orators further show that said receiver, by collusion and agreement with the said O. L. Van Laningham and said other personal defendants, did not take possession of the stock of said Great Western Insurance Company, but allowed the same to remain in the hands of said personal defendants and within the jurisdiction of this court, and that said stock in said Great Western Life Insurance Company now constitutes the principal portion of the assets of said Great Western Agency Company, and said receiver and said personal defendants by collusive and fraudulent agreement have agreed that the same shall remain in the hands of said personal defendants, and that said stock is now in their hands, or in the hands of those who represent them, and is within the Western District of Missouri, and
183 that unless action is taken by the court at once, said fraudulent and collusive suit, begun in the State of Colorado, as aforesaid, as part of the fraudulent scheme and devices aforesaid, will result in said collusively created receiver becoming possessed of the assets of said company for the purpose, now that this action is begun, of removing the same beyond the jurisdiction of this court, to the end that the same may be dissipated and paid out for the use and benefit of said personal defendants, to the irreparable loss and injury to these complainants and those situated as these complainants are, and that if action be taken by this court and a receiver appointed to take possession of said property, said wrong can and will be prevented.

22. Your orators further show that said Great Western Agency Company is insolvent; that its assets are only said moneys and interests which it has in said Great Western Insurance Company which do not exceed in value the sum of one hundred thousand dollars ($100,000), while its liabilities to its stockholders exceed the sum of six hundred thousand ($600,000) dollars, and that it is heavily indebted, but complainants cannot state the exact amount but say said indebtedness probably exceeds fifty thousand ($50,000) dollars.

23. Your orators further show that said Great Western Insurance Company has been so mismanaged that the value of its stock has been greatly impaired, and that its liabilities exceed its assets by more than forty thousand ($40,000) dollars, and that the mismanagement of said company by said personal defendants is still continuing and the value of the stock and assets is being constantly depreciated, impaired and endangered; that on account of the illegal acts and mismanagement of said Great Western Life Insurance Company by said personal defendants, it has already been excluded by

the authorities of the State of Oklahoma for doing business therein, and has been in like manner and for like reasons excluded from the State of Texas and barred from doing business therein, and has been refused a license to do business in the State of Nebraska and other states.

24. Your orators further show to the court that the purchase of stock made by the complainants and persons similarly situated, were all made in ignorance of the falsity of the pretenses herein set out, and the fraudulent purposes governing the personal defendants herein.

25. Your orators further show that in the further carrying out of the fraudulent schemes aforesaid, the said personal defendants proposed to increase the capital stock of the said Great Western Life Insurance Company from $100,000.00 to $1,000,000.00; that in the furtherance of that phase of said scheme they obtained through their collusively appointed receiver in Colorado permission to obtain such increase of stock; that application was made to the Superintendent of Insurance of the State of Missouri for leave to so enlarge the capitalization; that said permission was by said Superintendent of Insurance denied and withheld; that under the laws of the
184 State of Missouri such leave and permission must be granted by said Superintendent of Insurance before any such increase as aforesaid is lawfully possible; that despite the fact that no such permission was granted and despite the fact that no lawful authority existed for their so doing, said personal defendants in effect proceeded to issue and offer for sale such increased capitalization or its equivalent, and have in fact actually sold to divers and sundry persons to your orators unknown, quantities of said illegal and unauthorized stock or its equivalent, and from such sales realized the sum of not less than fifty thousand ($50,000) dollars, which moneys they have mingled with the other fraud obtained funds aforesaid, and are threatening and are about to dispose of all the rest of said proposed increase in defiance of law, and in fraud of the public and of the rights of your orators herein and all those similarly situated, and that by so doing they have rendered the charter of said insurance company liable to immediate arrest and forfeiture and have by so doing impaired the value of such assets as are available to satisfy the demands of your orators and those persons similarly situated, and all other persons by this bill shown to have an interest in said fund, and are threatening and are about to further depreciate said assets by continuing to violate the laws as aforesaid.

26. Your orators further allege that the said personal defendants or some of them, and your orators cannot at this time more particularly specify, have taken of the funds of the said Great Western Agency Company the sum of one hundred thousand ($100,000) dollars, and with it purchased Lots 9 and 10, D. O. Smart's Addition to Kansas City, Missouri, and erected thereon certain large, costly buildings and have placed the title to said property in the defendant, Julia W. Van Laningham, wife of defenant, O. L. Van Laningham;

that said defendant, Julia W. Van Laningham in fact holds said property by reason of the various frauds heretofore set forth, and the unlawful diversion of the funds of said Company in trust; that said defendant is a citizen and resident of the Western District of Missouri.

27. Your orators further show to the court that the number of stockholders is large and the diversity of their citizenship great; that there are of the stockholders of said Agency Company resident in the State of Kansas 982 persons; in Indiana 145 persons; in the Indian Territory 54 persons; in Oklahoma 43 persons; in Nebraska 45 persons, and many persons, though the exact number your orators cannot state, resident in the states of Colorado, Illinois, Kentucky, Michigan, Montana, Pennsylvania, New York and Texas; that as has already been stated, one of said corporate defendants while being a Colorado corporation has substantially all of its assets in the Western District of Missouri, and that the other of said corporations is a Missouri corporation, having its principal place of busness in said district; that not only has suit been brought in the manner aforesaid, but, as your orators are informed and believe, and so allege the fact to be, other suits are about to be brought and will be brought,
185 many in number unless action is taken by this court, to the end that all of the property resulting from the fraud created fund aforesaid, in whatever form it may now be found, be impounded by this court and administered, to the end that the various persons interested in said fund may receive their just share and portion; that the institution of such actions will be had in many jurisdictions and will result in a multiplicity of suits, complex litigation, with large incident expense, all to the destruction of the fund aforesaid, and of the rights of the various persons interested therein, including your orators and those similarly situated, that in addition to the rights of those persons there must be considered by the court the rights of those who have purchased said annuity certificates and in that way contributed to the fraud created fund aforesaid and of those who have in good faith purchased what they supposed to be policies of life insurance from said Great Western Life Insurance Company; that the complexity of interests as made manifest by this bill is so great that the matters and things herein involved can only be properly administered by a court of that wide jurisdiction possessed by this Honorable Court.

Your orators are informed and believe that a suit has already been brought against said Great Western Agency Company for an alleged indebtedness of more than $40,000.00, in which it is sought to attach the stock of said Great Western Life Insurance Company, and that said action, if continued, will result in the destruction of the value of the assets of the said Agency Company.

Wherefore, in consideration of the matters and things aforesaid, and for as much as your complainants have not sufficient remedy at law for the wrongs done and threatened to be done, and that remedy at law will afford no protection to your complainants

against the wrongs done and contemplated by said defendants because of the matters and things hereinbefore set forth; and whereas the situation presented by this bill is relievable in a court of equity only, where matters of this kind are properly cognizable and relievable. Now, then, to the end that your complainants may obtain the relief to which they are justly entitled in the premises, they——

1st. Pray the court to grant them a writ of subpœna directed to the said The Great Western Agency Company, The Great Western Life Insurance Company, O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall and Julia W. Van Laningham, being all of the defendants to this Bill of Complaint, requiring and commanding them to appear herein and answer though not under oath, the allegations in this bill contained.

2nd. That there issue from this court a writ of injunction staying and restraining said personal defendants, namely, O. L. Van Laningham, F. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall, and all of them as individuals and as officers of said companies, or either of said companies, from prosecuting
186 or in any wise proceeding in the prosecution of said suit pending in said State of Colorado, or from doing anything in said suit without the further order of this court, and that said writ be issued forthwith and immediately, and be and continue in force pending this litigation or during such portion thereof as to this court may seem proper, and that at the final hearing it be decreed that said injunction be permanent.

3rd. That a writ of injunction be issued staying and restraining O. L. Van Laningham and Julia W. Van Laningham from directly or indirectly conveying, transferring, or incumbering said property known as Lots 9 and 10 D. O. Smart's Addition to Kansas City, Missouri.

4th. And your complainants further pray that to the end that the properties belonging to these complainants and those similarly situated who have been wronged and defrauded as aforesaid and to preserve the assets of said Companies to the lawful and proper owners, and to the end that the properties aforesaid may be preserved so that the trust resulting from the frauds aforesaid can be administered for those who in equity are entitled to the benefits thereof, that this court make an order creating some person having the confidence of the court as receiver to take possession of all of the property and assets of every sort and kind, to be found within the jurisdiction of this court, whether belonging or claiming to belong to said Great Western Agency Company or said Great Western Life Insurance Company, including said Lots 9 and 10 D. O. Smart's Addition to Kansas City, Missouri, with the improvements thereon and appurtenances thereunto belonging, in whatsoever possession they may be found, and the rents and issues of said real estate to collect and preserve and dispose of as this court may hereinafter direct.

5th. And your complainants further pray that after the impounding of all of the properties aforesaid, and the taking possession thereof by this court and its officers, that it be adjudged and decreed that said property is in law and equity the property of complainants, and those similarly situated, and direct and decree that, after the payment out of said fund of the expenses of this litigation, that the same shall be distributed between the complainants and persons similarly situated in proportion to their contribution to said fund.

6th. And finally, your complainants pray that all such other and further relief, preliminary and final, as to the court may seem meet and proper, and which equity may require, shall be awarded to these complainants, together with their costs.

JOHN H. ATWOOD,
Solicitor for Complainants.

STATE OF MISSOURI,
County of Jackson, ss:

H. E. Ellison, being first duly sworn, on oath states that he is one of said complainants, and on their behalf, on behalf of himself and the other complainants, makes this affidavit.

187 He further states that he has read the above foregoing bill of complaint and knows the contents thereof, and that the statements and allegations therein contained are true as he verily believes, except those allegations which are made upon information and belief, and as to such allegations he verily believes the same to be true.

H. E. ELLISON.

Subscribed and sworn to before me, a notary public in and for Jackson County, State of Missouri, this 11th day of May, 1908.

My Commission expires Nov. 17th, 1908.

[SEAL.] THAD B. LANDON,
Notary Public, Jackson County Mo.

Filed May 11th, 1908.

Mr. Neel: Now, I want to offer in evidence a copy of the notice just referred to in this order of reference by the Federal Court, which was published in the Kansas City Star on July 27th, 1908, page 11; in the Kansas City Times July 28th, 1908, on page 11; again in the Kansas City Star on August 3rd, 1908, on page 13; in the Kansas City Times on August 4th, 1908, page 10; in the Kansas City Post on July 27th, 1908; again in the Kansas City Post on August 3rd, 1908. Also, that those are newspapers of general circulation in this county and state.

Mr. Landon: I object to that because it does not tend to prove or disprove any issue in this case, and is in no way binding upon the parties to the proceedings in this case at this time.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said document, so offered and introduced in evidence, marked Exhibit E, is in words and figures as follows:

EXHIBIT "E."

"Legal Notice.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Number 3367.

In Equity.

J. M. WAGSTAFF et al

vs.

THE GREAT WESTERN AGENCY COMPANY et al.

In pursuance of an order of the above named court in the above entitled cause, notice is hereby given that all claims and demands of whatsoever character held by any person, company or corporation vs. The Great Western Agency Company or The Great Western Life Insurance Company, must be duly presented to me as Master in Chancery at my office 809-811 New York Life Building, Kansas City, Missouri, for hearing on or before October 1, 1908, or the same will be forever barred.

WILLARD P. HALL,
Master in Chancery.

188 (Published Kansas City Star, July 27, 1908, P. 11.)
(Published Kansas City Times, July 28, 1908, P. 11.)
(Published Kansas City Star, August 3, 1908, P. 13.)
(Published Kansas City Times, August 4, 1908, P. 10.)
(Published Kansas City Post, July 27, 1908.)
(Published Kansas City Post, August 3, 1908.)"

Mr. Neel: I want to offer in evidence the bill of intervention on behalf of Adrian F. Sherman, the plaintiff in this case, in the case of Wagstaff vs. Great Western Agency et al., No. 3367, the case referred to, which was filed on August 13th, 1908.

Said document, so offered and introduced in evidence, was marked Exhibit "F," and is in words and figures as follows:

EXHIBIT "F."

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF et al. Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY et al., Defendants.

Bill of Intervention.

To the Juges of the Circuit Court of the United States for the Western Division of the Western District of Missouri, Sitting in Equity:

The Bill of Intervention of A. F. Sherman, exhibited against The Great Western Life Insurance Company, a corporation, C. S. Jobes, receiver of The Great Western Agency Company, C. S. Jobes Receiver of The Great Western Life Insurance Company, and all of the complainants and defendants in the above entitled cause and said above named intervener brings this his Bill of Intervention under the general permission of this court so to do and thereupon shows:

(1) That upon the bill of complaint of J. M. Wagstaff, and others, Complainants, vs. The Great Western Agency Company, and others, Defendants, in the above-entitled cause in equity, this honorable court, by its order duly made and entered of record on or about May 16, 1908, appointed the defendant C. S. Jobes, Receiver of The Great Western Agency Company, and of all of its property and assets of every kind and character, including whatever capital stock or other interest or interests said Agency Company had, or may have, in the defendant The Great Western Life Insurance Company, and did order that the said Receiver should order an election to be made of Directors and officers of said The Great Western Life Insurance Company, and did make other proper and appropriate orders in and concerning the premises, to which orders and the records thereof reference is hereby particularly made for the contents thereof, and all of said orders are made a part of this bill of intervention as fully and effectually as though copied herein verbatim; that the said
189 Receiver did thereupon qualify as such Receiver and entered actively upon the performance of his duties as such, and from that time forward until the present, has continued to act as such Receiver and took possession of substantially all of the property and assets of the defendant, The Great Western Agency Company, and elected a Board of Directors of said Company, and did thereupon assume charge and control of the said The Great Western Life Insur-

ance Company and the administration of its affairs and assets, all in pursuance of and in conformity with the terms of said order or orders of this court.

(2) That the defendant, The Great Western Life Insurance Companw is a corporation created and existing under and by virtue of the laws of the State of Missouri, having been organized in the month of April, 1907, with an authorized and paid up capital stock of $100,000.00, and that said defendant corporation was authorized by its charter and the laws of the State of Missouri to engage in the business of writing and issuing policies of insurance upon the lives of individuals and of purchasing and disposing of annuities and endowments of every kind and description whatsoever; that on July 6th, 1908, this honorable court by its order duly made and entered of record appointed the defendant C. S. Jobes receiver of the said The Great Western Life Insurance Company and of all of its property and assets of every kind and character and on or about the same date directed the said C. S. Jobes as receiver to sell and dispose of all the property and assets of every kind and character belonging to the said The Great Western Life Insurance Company.

(3) That on or about June 15th, 1907, The Great Western Life Insurance Company upon representations that it was authorized so to do, issued to this intervener a so-called 'Annuity Certificate,' bearing the number 96, and of the purported value of $1,500.00 in words and figures as follows, to-wit:

UNITED STATES OF AMERICA.

The Great Western Life Insurance Company.

Kansas City, Mo.

No. 96. Shares, Ten. $1,500.00

Annuity Certificate.

Whereas, The Great Western Life Insurance Company (hereinafter called the company), is desirous of qualifying for the writing of Life Insurance in a number of states, to the end that a large volume of business may be quickly and economically produced, and

Whereas, the company is authorized by its charter to carry on the business of insurance upon the lives of individuals, and every insurance pertaining thereto or connected therewith, and to
190 grant, purchase and dispose of annuities and endowments of every kind and description, and is specifically authorized, by resolution of its Board of Directors, to dispose of annuities in the various states in which it desires to write life insurance, upon the basis, at par, of one hundred and fifty ($150.00) dollars per share, and,

Whereas, A. F. Sherman has paid to the company for ten of said shares, the sum of fifteen hundred dollars.

Now therefore, in consideration of the premises, the company hereby agrees to apportion and pay to the owner hereof, an annuity, during his life, and thereafter to his heirs or personal representatives, of ten shares of the proceeds of twenty-five cents per one thousand dollars of all insurance, except re-insurance, written by the company in the United States for fifty years from the date of its incorporation, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows, to-wit:

I. The aggregate of said twenty-five cents per one thousand dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by

Five hundred;

the quotient obtained shall be the apportionment to each of said shares, and the total of ten shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the company herefor, as stated above.

III. This certificate is assignable in writing and transferable only on the books of the company, in person or by attorney, upon presentation of this certificate at the home office of the company.

In witness whereof, The Great Western Life Insurance Company has caused this certificate to be signed by its duly authorized officers, and to be sealed with its corporate seal, at Kansas City, Missouri, this 17th day of June, 1907.

(Signed) O. L. VANLANINGHAM,
President.

Attest:

[SEAL.] (Signed) E. L. BIERSMITH,
Secretary.

(4) That in consideration of the issuance of said so-called annuity certificate, this intervener executed and delivered to the said The Great Western Life Insurance Company his promissory note bearing date of June 15th, 1907, whereby he promised and agreed to pay said The Great Western Life Insurance Company $1,500.00, with interest from maturity thereof at the rate of eight per cent (8%) per annum.

This intervener further says that on September 13th, 1907, he paid to the Commerce Trust Company, the then holder of said note, the sum of $258.35, and issued another promissory note of the same date whereby he promised and agreed to pay the sum of
191 $1,250.00 thirty days after date, at the rate of eight per cent (8%) per annum from maturity.

This intervener further says that on October 14th, 1907, he took up the said last described note and paid to the said Commerce Trust

Company the sum of about $16.00, and executed another certain promissory note reading as follows:

$1,250.00. Kansas City, Mo., Oct., 14, 1907.

Sixty days after date — promise to pay to Great Western Life Insurance Company or order twelve hundred and fifty dollars at the Commerce Trust Company, Kansas City, Mo., with interest from — due payable annually, at the rate of eight per cent per annum. If not so paid, compounded.

Value Received.
No. 541 Due Dec. 13th.

A. F. SHERMAN.

(5) That in order to induce this intervener to purchase the said so-called annuity certificate Mr. J. E. Smith, treasurer of the said The Great Western Life Insurance Company, represented to this intervener that the said The Great Western Life Insurance Company had full and complete authority to issue the said so-called annuity certificates and that there was being issued 500 shares of said certificates, amounting to $75,000.00, which said sum of money was to be used in promoting and benefiting the business of the said The Great Western Life Insurance Company, and that no further issue of annuity certificates would be made other than the one issue of $75,000.00. Contrary to the representation as aforesaid, by the said J. E. Smith, the said The Great Western Life Insurance Company issued so-called annuity certificates to the amount of about $330,000.00, which said fact was ascertained by this intervener some time in the early part of December, 1907. Upon ascertaining said facts, this intervener refused to pay the said last mentioned note, when due, and the same is now as the said intervener is informed, believes and therefore charges the fact to be among the property and assets of The Great Western Life Insurance Company, which is now in the hands of Mr. C. S. Jobes, receiver.

(6) This intervener further shows that the said The Great Western Life Insurance Company was not authorized by its charter to issue the said so-called annuity certificates and had no power or authority whatsoever for so doing.

(7) This intervener further shows that he is informed and believes and therefore charges the fact to be that the said note is listed among the assets of the said The Great Western Life Insurance Company and is about to be sold and transferred by Mr. C. S. Jobes, receiver herein, which if permitted to be done, would work a hardship and irreparable injury upon this intervener.

Wherefore, this intervener being remediless at and by the rules of the common law, and being without remedy except in a court of equity where matters of this kind are properly cognizable and
192 reviewable, prays that the said defendant the said C. S. Jobes as receiver of the said The Great Western Life Insurance Company, may answer the premises, but not under oath or affirma-

tion, the benefit whereof is expressly waived by this intervener and intervener further prays that the said C. S. Jobes as receiver herein be instructed to cancel the said note and to refrain from selling or transferring the same to any one whatsoever, that the said note be declared null and void and that this intervener may be granted such other and further relief and remedies in the premises as shall seem meet and agreeable to equity and your intervener as in duty bound will ever pray.

——— ———,
Solicitor for Intervener.

STATE OF MISSOURI,
County of Jackson, ss:

Adrian F. Sherman, of lawful age, being duly sworn upon his oath, states that he is the intervener named in the foregoing bill of intervention; that he has read the said bill of intervention and that the facts stated therein are true, except as to such matters as are therein stated upon information and belief and as to them affiant believes them to be true.

(Signed) ADRIAN F. SHERMAN.

Subscribed and sworn to before me this 13th day of August, 1908.

[SEAL]. (Signed) EDMOND C. FLETCHER,
Notary Public, Jackson County, Mo.

My commission expires Sept. 10, 1908.

Service of copy of within bill of intervention made this 13th day of August, 1908, by leaving same at the office of E. L. Scarritt, solicitor of record for C. S. Jobes, Recvr.

(Signed) A. F. SHERMAN."

Endorsed on the back thereof is the following: "3367. J. M. Wagstaff et al. v. The Gt. Western Agency Co. et al. Bill of Intervention of A. F. Sherman. Adrain F. Sherman, Solicitor. Filed August 13, 1908. Adelaide Utter, Clerk."

Mr. Neel: I want to offer in evidence the order of Judge Hall, the master, on the report of himself as to the intervening petitions, which was filed January 18th, 1909, in the District Court of the United States for the Western Division of the Western District of Missouri.

Mr. Landon: Objected to as wholly immaterial to any issue in this case.

193 The Court: Objection sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

Said document, so offered and rejected by the court, was marked Exhibit "G," and is as follows:

EXHIBIT "G."

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

v.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN LIFE INSURANCE COMPANY, et al., Defendants.

Order upon Report of Master in Chancery as to Intervening Petitions.

It appearing from the report of Willard P. Hall, Master in Chancery, that as such master under the order of this court he caused notices to be published in The Kansas City Post and The Kansas City Star, newspapers published in Kansas City, Missouri, in relation to the presentation of claims herein, for which said papers make charges as follows: The Kansas City Post $4.80, The Kansas City Star $7.20, it is hereby ordered that William T. Kemper, for and on behalf of The Great Western Life Insurance Company, pay said charges to the proprietors of said papers respectively, as costs herein.

It further appearing from said report that the interveners hereinafter named, after having filed intervening petitions herein, have settled the same, it is hereby ordered, adjudged and decreed that said intervening petitions be and the same are hereby dismissed. Said interveners are as follows, to wit:

Ola Putnam, et al.
Walter H. Long.
William Norris.
Chas. E. Tannehill.
William E. Long.
W. H. Wells.
Emerson Carey.
Harry H. Wooley, et al.
C. E. McBride.
A. A. Wilson & F. F. Davis.
W. W. Kerr.
P. W. Darrah, et al.

We consent to the above and foregoing order.

(Signed) SMITH McPHERSON,
Judge.

(Signed) JAMES W. ORR,
Counsel for the Great Western Life Insurance Company.

Done this 18th day of January, 1909."

194 Endorsed on the back thereof is the following: "3367. In the Circuit Court of the United States for the Western Division of the Western District of Missouri. J. M. Wagstaff, et al., Complainants, v. The Great Western Agency Company, The Great Western Life Insurance Company, et al., Defendants. Order Upon Report of Master in Chancery as to Intervening Petitions. Filed Jany. 18, 1909. Adelaide Utter, Clerk."

Mr. Neel: I want to offer in evidence the final report of the master on the intervening petition filed January 17th, 1910, in the Wagstaff case, by Judge Hall in the United States Court.

Mr. Landon: Objected to as incompetent and immaterial in no way tending to prove or disprove any issue in this case.

The Court: Unless it is admitted the claims represented by Mr. Sherman at that time are distinct from the claims upon which this suit was based, the objection should be overruled.

Mr. Landon: The parties named here are James E. Smith, O. F. Van Landingham, A. F. Sherman and A. Schooley. None of those parties are interested in the present controversy.

The Court: Mr. Sherman is interested.

Mr. Landon: I understand, but not upon the certificate then in issue on this intervening petition.

The Court: That hasn't been admitted.

Mr. Landon: They haven't shown the intervening petition.

The Court: Not yet, but they haven't admitted it is not the same claim. Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said document, so offered and introduced in evidence, was marked Exhibit H, and is in words and figures as follows:

EXHIBIT "H."

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY et al., Defendants.

Final Report of Master on Intervening Petitions.

To the Honorable Judges of the Above Entitled Court:

My former report as to the intervening petitions filed herein covered all of said petitions except those of the following named parties, to wit:

James E. Smith.
Julia W. Vanlandingham.
Clare R. Hewitt.
A. F. Sherman, and
A. Schooley.

Since said report was made, the court made an order that the order of reference to me of the intervening petitions of Julia
195 W. Vanlandingham and James E. Smith be vacated, and that said intervening petitions be heard by the court without the intervention of a master.

The intervening petitions of A. F. Sherman and A. Schooley have been adjusted and settled between the parties.

Clare R. Hewitt has filed with me a stipulation, concurred in by the Great Western Life Insurance Company, asking that his intervening petition be dismissed with prejudice. Said stipulation is attached hereto and made a part hereof.

I recommend that the intervening petition of Clare R. Hewitt be dismissed in accordance with said stipulation, and that the intervening petitions of A. F. Sherman and A. Schooley be also dismissed with prejudice.

I respectfully ask that the court make a reasonable allowance in my favor for my services herein.

(Signed) WILLARD P. HALL,
Master in Chancery.

January —, 1910.

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY et al., Defendants.

And now comes Clare R. Hewitt, an intervening petitioner in the above entitled suit, who has heretofore filed an intervening petition against The Great Western Life Insurance Company, defendant, and moves the court to dismiss his intervening bill by him filed and his suit thereon against The Great Western Life Insurance Company with prejudice to another suit.

(Signed) C. R. HEWITT,
Intervening Petitioner.

Stipulation.

It is hereby agreed by and between Clare R. Hewitt, who has filed his bill as intervening petitioner in the above entitled suit and The Great Western Life Insurance Company, defendant therein, that the said bill in the above entitled suit shall be dismissed by the court with prejudice to another suit by the said intervening petitioner.

In Witness Whereof the parties hereto have hereunto subscribed their names on this 17th day of July, 1909.

(Signed) C. R. HEWITT,
Intervening Petitioner.
THE GREAT WESTERN LIFE INSURANCE COMPANY.
(Signed) By WM. THOMSON,
Its Attorney."

Endorsed on the back thereof is the following:

"No. 3367. In Equity. In the Circuit Court of the United States for the Western Division of the Western District of Missouri.
196 J. M. Wagstaff et al., Complainants, vs. The Great Western Agency Company et al., Defendants. Final Report of Master on Intervening Petition. Filed Jan'y 17, 1910. Adelaide Utter, Clerk."

Mr. Neel: When I offered, a little while ago, the report of the master dated January 18th, that was mistake, I should have offered the other one dated January 2nd, 1909, which I want to offer in evidence and read.

Said document, so offered and introduced in evidence, was marked Exhibit I, and is in words and figures as follows:

EXHIBIT "I."

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN LIFE INSURANCE COMPANY, et al., Defendants.

Report of Master in Chancery as to Interventions Herein.

To the Honorable Judges of the Above Named Court:

As Master in Chancery, I make the following report as to the interventions filed herein, as to my acts in relation thereto, and as to the condition of said interventions.

Judge Philips made an order herein on July 24, 1908, referring all intervening petitions theretofore filed herein to me, as such master, directing that the issues therein be made up before me, and it was further provided in said order that all persons having claims of any character against The Great Western Agency Company and The Great Western Life Insurance Company should present the same in due form of intervention before me and upon the issues therein being completed before me, that I should proceed in due form and time to hear and determine the same, and render to this court my findings and conclusions of law, together with the evidence therein. It was further provided in said order that upon the receipt of it I give notice by two insertions, with an interval of one week between them, in two of the daily newpapers of Kansas City, Missouri, that all claims and demands of whatsoever character held by any person, company or corporation against the said defendant companies should be presented to me for hearing on or before the 1st day of October, 1908, or that the same would be forever barred.

I caused notice to be published in two of the newspapers in Kansas City, Missouri, to-wit: The Kansas City Post and The Kansas City Star, as directed in said order. The charges made for said publications are respectively as follows:

By The Kansas City Post $4.80
By The Kansas City Star $7.20

197 I recommend that the court make an order directing t
payment of said charges directly to the proprietors of sa
papers.

Afterwards there were filed with the clerk of this court i
terventions in behalf of the following named parties on the follo
ing dates:

Names.	Dates.
Ola Putnam, et al.	Aug. 6, 190
P. W. Darrah, et al.	July 31, "
C. E. McBride	July 30, "
Harry H. Wooley, et al.	July 28, "
Emerson Carey	July 27, "
W. H. Wells	July 28, "
William E. Long, et al.	June 23, "
Charles C. Tennehill	July 22, "
Will Norris	July 22, "
Walter H. Long	July 22, "
W. W. Kerr	Aug. 27, "
A. F. Sherman	Aug. 13, "
A. Schooley	Aug. 13, "
Claire R. Hewitt	Aug. 10, "
Ola Putnam	July 22, "
James E. Smith	filed in due time
Julia W. Vanlaningham	filed in due time

Notice of claim in behalf of D. J. Hanna and E. H. Lupton was filed with the clerk of this court upon Aug. 15, 1908.

It was provided in the decree of this court herein approving the plan for the reorganization and rehabilitation of The Great Western Life Insurance Company, among other things, that said claim of Hanna & Lupton be paid in a manner and on terms therein stated, but afterwards that portion of said decree was stricken out without prejudice to said claim, said claim was referred to me as master by Judge McPherson, to take evidence in relation thereto and to report my findings of fact and conclusions of law. Thereafter an intervening petition was filed with me in behalf of Hanna & Lupton and after the same had been set for hearing before me and before the day of hearing said claim was adjusted by counsel for Hanna & Lupton and for The Great Western Life Insurance Company, and a stipulation between said parties to the effect that said claim has been settled and that the said intervening petition be dismissed has been filed with the clerk of this court, I accordingly recommend that said intervening petition be dismissed as per stipulation on file.

All of the other of said intervening petitions have been settled by agreement between the intervening petitioners and The Great Western Life Insurance Company except the following, to-wit: Those of James E. Smith, Julia W. Vanlandingham, Claire R. Hewitt, A

F. Sherman and A. Schooley, and therefore, I recommend
198 that all said intervening petitions except those not settled as aforesaid be dismissed.

December 31, 1908.

Respectfully submitted.

(Signed) WILLARD P. HALL,
Master in Chancery."

Endorsed on the back thereof is the following:

"3367. In the Circuit Court of the United States for the Western Division of the Western District of Missouri. J. M. Wagstaff et al., Complainants, vs. The Great Western Agency Company, The Great Western Life Insurance Company et al., Defendants. Report of Master in Chancery as to Interventions Herein. Filed Jany. 2, 1909. Adelaide Utter, Clerk."

Mr. Neel: Now, I want to read that part of the stipulation which Mr. Landon offered this morning as Exhibit 1.

(Counsel here read Exhibit 1, heretofore shown.)

Mr. Neel: Now, if Your Honor please, I want to offer in evidence the report of sale by the Receiver in the Wagstaff case in the Federal Court, together with the proofs of publication, thereto attached, of the notices, and also the bid dated July 27th, 1908, of the Kansas City Life Insurance Company, and the bid thereto attached of the Trans-Mississippi Life Insurance Company, and also the bid thereto attached of the Philadelphia Life Insurance Company.

Said documents, so offered and introduced in evidence, were marked Exhibit "J," and are, respectively, in words and figures as follows:

EXHIBIT "J."

"In the Circuit Court of the United States within and for the Western Division of the Western District of Missouri.

No. 3367.

J. M. WAGSTAFF et al., Plaintiffs,

vs.

THE GREAT WESTERN AGENCY COMPANY et al., Defendants.

Report of Sale by the Receiver.

To the Honorable Judges of the Circuit Court of the United States within and for the Western Division of the Western District of Missouri:

Your receiver herein, C. S. Jobes, respectfully reports and represents to Your Honors that in pursuance of an order of this court

heretofore made and entered of record on July 6, 1908, he, in conjunction with the officers and directors of the Great Western Life Insurance Company in charge of said company with and under him, caused a notice to be published in the Kansas City Journal, the Kansas City Star and the Kansas City Post, for two weeks, beginning on the 13th day of July, 1908, and ending on the 27th day of said month, for bids to purchase the property and assets of the
199 Great Western Life Insurance Company, and for proposals to reinsure the policy risks of said company; proof of publication of said notice in each of said papers is hereto attached and herewith filed as a part of this report.

According to said order and notice such bids and proposals were to be received by the undersigned receiver at the office of the Great Western Life Insurance Company, No. 201 R. A. Long Building, corner of Grand Avenue and Tenth Street in Kansas City, Missouri, until the hour of noon on the 28th day of July, 1908, after which time said bids and proposals were to be submitted to this court for its action thereon in conformity to the requirements of the said order of the court.

Pending said notice and advertisement a number of persons purporting to represent insurance companies, examined the detailed schedule of the assets and liabilities and the character and kind of policies of said insurance company, which were furnished for inspection by the undersigned receiver, and also examined the books and property of said company.

At the appointed hour and place of receiving bids and proposals there was submitted to your receiver three bids and proposals, one from the Philadelphia Life Insurance Company of Philadelphia, Pennsylvania, one from the Trans-Mississippi Life Company of Kansas City, Missouri, and one from the Kansas City Life Insurance Company of Kansas City, Missouri. Upon the receipt of said bids and proposals, which were all duly enclosed and sealed, and before opening the same, your receiver called upon the Hon. W. D. Vandiver, superintendent of the Insurance Department of the State of Missouri, to assist him in the opening, analyzing and passing upon said bids and proposals. After a careful investigation, analysis and comparison of said bids, your receiver and the said superintendent of the Insurance Department of the State of Missouri concluded that the bid and proposal of the Kansas City Life Insurance Company of Kansas City, Missouri, was the highest and best bid and proposal which had been submitted. Thereupon, your receiver endorsed on said bid and proposal of the Kansas City Life Insurance Company of Kansas City, Missouri, the following:

'According to my interpretation of the several bids submitted, I regard the foregoing as being the highest and best bid and I recommend that a contract be entered into with the above named company in accordance with the foregoing proposal and bid.

(Signed) C. S. JOBES,
Receiver.

Thereupon the Hon. W. D. Vandiver, Superintendent of the Insurance Department of the State of Missouri, endorsed thereon the following:

'I concur in the above recommendation.

(Signed) W. D. VANDIVER,
Superintendent of Insurance.

July 28, 1908.'

200 All of said bids with the endorsements thereon are hereto attached and herewith submitted and filed as a part of this report.

Your receiver would therefore recommend that the bid and proposal of the Kansas City Life Insurance Company of Kansas City, Missouri, be accepted and approved by this court, and that an order be entered herein authorizing and directing your receiver and the officers and directors of the Great Western Life Insurance Company to assign, transfer, set over and deliver all of the assets and property of the Great Western Life Insurance Company to the Kansas City Life Insurance Company, and that the receiver and said officers and directors be authorized and directed to enter into a contract with the said Kansas City Life Insurance Company whereby all the outstanding life insurance policies of the Great Western Life Insurance Company in force at the time shall be reinsured in and by said Kansas City Life Insurance Company, free from any burden or obligation made by the Great Western Life Insurance Company in or by reason of any independent contract or contracts, and subject only to the terms and stipulations and contracts made upon the face of the policies, which contract shall also embody the terms and conditions of the bid and proposal of the Kansas City Life Insurance Company, upon the payment by said Kansas City Life Insurance Company to your receiver of the amount of the bid of said Kansas City Life Insurance Company, and the filing of a bond of said company in this court in the penal sum of $150,000 with surety or sureties to be approved by the court, conditioned that the terms of the policies reinsured shall be carried out and performed, which bond shall continue in force for one year after such reinsurance.

(Signed) C. S. JOBES,
Receiver."

"*Affidavit of Publication.*

STATE OF MISSOURI,
County of Jackson, ss:

Hal Gaylord of Kansas City, Missouri, of lawful age, being duly sworn, says that he is general manager and a member of The Journal Company, a corporation, proprietors and publishers of the 'Kansas City Journal,' a newspaper published daily; and the 'Kansas City Sunday Journal,' a newspaper published Sunday in Kansas City, Jackson County, Missouri, and the 'Kansas City Weekly Journal,' a weekly newspaper published in Kansas City, Jackson County, Mis-

souri; and that the notice to bidders, J. M. Wagstaff et al., complainants, vs. The Great Western Agency Company et al., defendants, No. 3367, a true copy of which is hereto attached, was duly published in the daily and Sunday editions of said newspaper for the period of fourteen (14) days, commencing July 13th, 1908, and in each of the following issues thereafter: July 14, 15, 16, 17, 18, 19; July 20, 21, 22, 23, 24, 25, and July 26, 1908.

(Signed) HAL GAYLORD.

201 Printer's Fee ..... $....
Proof of publication ....

Total ..... $....

Received payment.

Subscribed and sworn to before me this 27th day of July, 1908, and I certify that I was duly qualified as a notary public and that my term expires the 4th day of Nov. 1909.

[SEAL.] (Signed) LIONEL NOISE,
Notary Public in and for Jackson County, Missouri."

Pasted on the face of the foregoing affidavit of publication is the following printed notice:

"*Notice to Bidders.*

In the United States Circuit Court for the Western District of Missouri, at Kansas City.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY et al., Defendants.

On July 6, 1908, the court duly made and entered of record an order in the above entitled cause to the effect that the undersigned receiver and the officers and directors of The Great Western Life Insurance Company in charge of said company, with and under the receiver, shall proceed without unnecessary delay to reinsure the outstanding policies of said Great Western Life Insurance Company in some reliable life insurance company, which shall be approved by the superintendent of the Insurance Department of the State of Missouri, and by the court, and sell and dispose of all the property and assets of said company to said reinsuring company, and to that end the receiver and the said officers and directors shall advertise for at least two weeks for bids to purchase said property and assets and for proposals to reimburse the policy risks of said company in the

amounts and forms as shown by its life insurance policies. A certified copy of said order and the report of the receiver upon which the same was issued and a detailed schedule of all the assets and liabilities and character and kind of policies of said insurance company will be furnished for inspection by the undersigned receiver at any time at the office of the Great Western Life Insurance Company in the R. A. Long Building, at the corner of Grand Avenue and Tenth Street in Kansas City, Missouri, to anyone desiring or proposing to bid therefor. A summary of said report and of the financial condition of said insurance company shows liabilities of about $420,000.00, which does not include the cost and expenses of the management under the receivership, while the assets of the company, consisting of mortgage loans, investment bonds, cash on hand, furniture, fixtures, stationery, supplies and all other property and assets, amount to $278,700.00, making an excess of liabilities over
202 assets of $141,300.00. There are 8,116 policies of the insurance company now in force, covering insurance of $23,402,300.00.

Now, therefore, notice is hereby given that in pursuance of the above recited order of the court the undersigned receiver will receive bids for the purchase of all the property and assets, and proposals for the reinsuring of all the policy risks of said Great Western Life Insurance Company at the office of said company, No. 201 R. A. Long Building, corner of Grand Avenue and Tenth Street, in Kansas City, Missouri, until the hour of noon the 28th day of July, 1908, after which time said bids will be submitted to the above court for its action thereon in conformity to the requirements of said order. Each bid shall state specifically the terms and conditions upon which the reinsurance of the policies of said life insurance company will be made, and the amount that will be paid for all the property and assets of the company, and shall be accompanied by a certified check or draft for $1,000, payable to the order of C. S. Jobes, receiver. The successful bidder will be required to file in court a bond in the penal sum of $100,000, with surety or sureties to be approved by the court, conditioned that the terms of the policies reinsured shall be carried out and performed, which bond shall continue in force for a year after such reinsurance. The court reserves the right to reject any and all bids, and to withhold final action on the rejection or acceptance of bids until after an examination is made of the affairs of the companies bidding in order to ascertain their responsibility. Upon the acceptance and approval of any bid by the court, the receiver and board of directors will be required to cause to be conveyed, transferred, assigned and delivered to the successful bidder all the property and assets of the insurance company upon payment of the consideration bid therefor, and enter into a contract of reinsurance with such successful bidder, whereby all the outstanding life insurance policies of the Great Western Life Insurance Company in force at the time shall be reinsured by such successful bidder free from any burden or obligation made by said insurance company in or by reason *or* any independent contract or contracts, and subject

only to the terms, stipulations and contract made upon the face of the policies.

C. S. JOBES,
Receiver.

By order Board Directors.
J. B. CASE,
President.

First insertion July 13th, 1908."

"Affidavit of Publication.

Aug. F. Seested of the City of Kansas City, Missouri, of lawful age, being duly sworn, says that he is one of the publishers of the Kansas City Star and the Kansas City Times, a newspaper published daily in the City of Kansas City, Jackson County, Missouri, and that the notice of Notice to Bidders, a true copy of which is hereto
203 attached, was duly published in the daily and Sunday editions of said newspaper for the period of 15 times, commencing July 13, 1908, and ending July 27, 1908, on the following dates: July 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, the same being published in Nos. 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314 of Volume 28 of said newspaper.

(Signed) AUG. F. SEESTED

Subscribed and sworn to before me, this 29th day of July, 1908, and I certify that I was duly qualified as a notary public.

My commission expires April 22, 1911.

[Seal Geo. C. Burns, Notary Public, Jackson County, Mo.]

(Signed) GEO. C. BURNS,
Notary Public, Jackson County, Missouri.

Printer's Fee ..... $....
Proof of publication ....

Total ..... $....

Received payment.
—— ——."

Pasted on the face of the foregoing affidavit of publication is the following printed notice:

"*Notice to Bidders.*

In the United States Circuit Court for the Western District of Missouri, at Kansas City.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY et al., Defendants.

On July 6, 1908, the court duly made and entered of record an order in the above entitled cause to the effect that the undersigned receiver, and the officers and directors of The Great Western Life Insurance Company in charge of said company, with and under the receiver, shall proceed without unnecessary delay to reinsure the outstanding policies of said Great Western Life Insurance Company in some reliable life insurance company, which shall be approved by the superintendent of the Insurance Department of the State of Missouri, and by the court, and sell and dispose of all the property and assets of said company to said reinsuring company, and to that end the receiver and the said officers and directors shall advertise for at least two weeks for bids to purchase said property and assets and for proposals to reimburse the policy risks of said company in the amounts and forms as shown by its life insurance policies. A certified copy of said order and the report of the receiver upon which the same was issued and a detailed schedule of all the assets and liabilities and character and kind of policies of said insurance
204 company will be furnished for inspection by the undersigned receiver at any time at the office of the Great Western Life Insurance Company, in the R. A. Long Building, at the corner of Grand Avenue and Tenth Street in Kansas City, Missouri, to anyone desiring or proposing to bid therefor. A summary of said report and of the financial condition of said insurance company shows liabilities of about $420,000.00, which does not include the cost and expenses of the management under the receivership, while the assets of the company, consisting of mortgage loans, investment bonds, cash on hand, furniture, fixtures, stationery, supplies and all other property and assets amount to $278,700.00, making an excess of liabilities over assets of $141,300.00. There are 8,116 policies of the insurance company now in force, covering insurance of $23,402,300.00.

Now, therefore, notice is hereby given that in pursuance of the above recited order of the court the undersigned receiver will receive bids for the purchase of all the property and assets, and proposals for the reinsuring of all the policy risks of said Great Western Life Insurance Company at the office of said company, No. 201 R. A. Long Building, corner of Grand Avenue and Tenth Street, in Kansas City, Missouri, until the hour of noon the 28th day of July, 1908,

after which time said bids will be submitted to the above court for its action thereon, in conformity to the requirements of said order. Each bid shall state specifically the terms and conditions upon which the reinsurance of the policies of said Life Insurance Company will be made, and the amount that will be paid for all the property and assets of the company, and shall be accompanied by a certified check or draft for $1,000, payable to the order of C. S. Jobes, receiver. The successful bidder will be required to file in court a bond in the penal sum of $100,000, with surety or sureties to be approved by the court, conditioned that the terms of the policies reinsured shall be carried out and performed, which bond shall continue in force for a year after such reinsurance. The court reserves the right to reject any and all bids, and to withhold final action on the rejection or acceptance of bids until after an examination is made of the affairs of the companies bidding in order to ascertain their responsibility. Upon the acceptance and approval of any bid by the court the receiver and board of directors will be required to cause to be conveyed, transferred, assigned and delivered to the successful bidder all the property and assets of the insurance company upon payment of the consideration bid therefor, and enter into a contract of reinsurance with such successful bidder, whereby all the outstanding life insurance policies of the Great Western Life Insurance Company in force at the time shall be reinsured by such successful bidder free from any burden or obligation made by said insurance company in or by reason of any independent contract or contracts, and subject only to the terms, stipulations and contract made upon the face of the policies.

205 By order board directors.

C. S. JOBES,
Receiver.
J. B. CASE,
President.

First insertion July 13, 1908."

"Affidavit of Publication.

STATE OF MISSOURI.
County of Jackson, ss:

Chas. C. Corwin, of Kansas City, Missouri, of lawful age, being duly sworn, says that he is the publisher of The Kansas City Post, a newspaper published daily in Kansas City, Jackson County, Missouri, and that the advertisement of Notice to Bidders, J. M. Wagstaff et al., complainants, v. The Great Western Agency Company et al., defendants, No. 3367, C. S. Jobes, Receiver. By order of directors. J. B. Case, President, a true copy of which is *hereby* attached, was duly published in the editions of said newspaper for the period of fifteen days, beginning July 13, 1908, and ending July 27, 1908, on the following dates: July 13, 14, 15, 16,

17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 of Volume Three of said newspaper.

(Signed) CHAS. C. CORWIN,
Publisher.

Subscribed and sworn before me, this 28 day of July, 1908, and I certify that I was duly qualified as a Notary Public, and my commission expires April 15, 1912.

[Seal Nellie A. Patterson, Notary Public, Jackson County, Mo.]

(Signed) NELLIE A. PATTERSON,
Notary Public, Jackson County, Missouri."

Pasted on the face of the foregoing affidavit of publication is the following printed notice:

"*Notice to Bidders.*

In the United States Circuit Court for the Western District of Missouri, at Kansas City.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

v.

THE GREAT WESTERN AGENCY COMPANY et al., Defendants.

On July 6, 1906, the court duly made and entered of record an order in the above entitled cause to the effect that the undersigned receiver, and the officers and directors of The Great Western Life Insurance Company in charge of said company with and under the receiver, shall proceed without unnecessary delay to reinsure the outstanding policies of said Great Western Life Insurance Company in some reliable life insurance company, which shall be approved by the Superintendent of the Insurance Department of the State of Missouri and by the court, and sell and dispose of all the property and assets of said company to said reinsuring company, and to that end the receiver and the said officers and directors
206 shall advertise for at least two weeks for bids to purchase said property and assets and for proposals to reimburse the policy risks of said company in the amounts and forms as shown by its life insurance policies. A certified copy of said order and the report of the receiver upon which the same was issued and a detailed schedule of *of* all the assets and liabilities and character and kind of policies of said Insurance Company will be furnished for inspection by the undersigned receiver at any time at the office of the Great Western Life Insurance Company in the R. A. Long Building at the corner of Grand Avenue and Tenth Street in Kansas City, Missouri, to any one desiring or proposing to bid therefor. A

summary of said report and of the financial condition of said Insurance Company shows liabilities of about $420,000.00, which does not include the cost and expense of the management under the receivership, while the assets of the company, consisting of mortgage loans, investment bonds, cash on hand, furniture, fixtures, stationery, supplies and all other property and assets amount to $278,700.00, making an excess of liabilities over assets of $141,300.00. There are 8,116 policies of the insurance company now in force, covering insurance of $23,402,360.00.

Now, therefore, notice is hereby given that in pursuance of the above recited order of the court the undersigned receiver will receive bids for the purchase of all the property and assets, and proposals for the reinsuring of all the policy risks of said Great Western Life Insurance Company at the office of said company, No. 201 R. A. Long Building, corner of Grand Avenue and Tenth Street, in Kansas City, Missouri, until the hour of noon the 28th day of July, 1908, after which time said bids will be submitted to the above court for its action thereon, in conformity to the requirements of said order. Each bid shall state specifically the terms and conditions upon which the reinsurance of the policies of said Life Insurance Company will be made, and the amount that will be paid for all the property and assets of the company, and shall be accompanied by a certified check or draft for $1,000, payable to the order of C. S. Jobes, Receiver. The successful bidder will be required to file in court a bond in the penal sum of $150,000, with surety or sureties to be approved by the court, conditioned that the terms of the policies reinsured shall be carried out and performed, which bond shall continue in force for a year after such reinsurance. The court reserves the right to reject any and all bids, and to withhold final action on the rejection or acceptance of bids until after an examination is made of the affairs of the companies bidding in order to ascertain their responsibility. Upon the acceptance and approval of any bid by the court the receiver and board of directors will be required to cause to be conveyed, transferred, assigned and delivered to the successful bidder all the property and assets of the insurance company upon payment of the consideration bid therefor, and enter into a contract of reinsurance with such successful bidder, whereby all the outstanding life insurance policies of the Great Western Life Insurance Company in force at the time
207 shall be reinsured by such successful bidder free from any burden or obligation made by said insurance company in or by reason of any independent contract or contracts, and subject only to the terms, stipulations and contract made upon the face of the policies.

C. S. JOBES,
Receiver.
J. B. CASE,
President.

By order Board of Directors. First insertion July 13, 1908. July 13–July 27."

"Kansas City, Mo., July 27th, 1908.

Mr. C. S. Jobes, Receiver,
Great Western Life Ins. Co.,
Kansas City, Missouri.

DEAR SIR:

In accordance with the terms of a 'Notice to Bidders' in the case number 3367, J. M. Wagstaff et al. v. Great Western Life Insurance Company et al., in the United States Circuit Court for the Western Division of the Western District of Missouri at Kansas City, the undersigned, Kansas City Life Insurance Company, hereby respectfully submits the following proposal; (*a*) to reinsure the business in force of the Great Western Life Insurance Company, of Missouri, and (*b*) to purchase the assets of said company, consisting of mortgage loans, investment bonds, cash on hand, bills receivable and notes, furniture and fixtures, stationery, supplies and all property and assets of every kind, belonging to said Great Western Life Insurance Company for the sum of three hundred thousand ($300,000.00) dollars, cash in hand, and also a renewal commission of $5.00 per thousand dollars of insurance outstanding, that is continued in force under the reinsurance contract (as fully set out in paragraph 8), subject to the following terms and conditions:

First. In the event this bid is accepted and approved, this company will include in the reinsurance contract a guarantee to maintain the deposit of funds at this time held by the Department of Insurance of Missouri for the protection and security of the holders of registered policies issued by The Great Western Life Insurance Company, and to increase said deposit semi-annually as the reserve liability on same becomes greater by the payment of renewal premiums thereon, so that the fund held by the State of Missouri for the protection of said registered policy holders shall be, at all times during the continuance in force of any of said registered policies of the Great Western Life Insurance Company, equal in amount to the entire cash value of said policies.

Second. This company will incorporate in said reinsurance contract a provision that any policy holder of The Great Western Life Insurance Company whose contract of life insurance was in force according to the books of said company on May 11th, 1908, and who, in consequence of the uncertainty as to the future of that institution existing since that time, has permitted his policy to lapse and
208 terminate by non-payment of any premium becoming due, shall have the privilege and option of reinstating his policy in force upon a compliance with the usual rule of the Kansas City Life Insurance Company in regard to the reinstatement of lapsed policies.

Third. The cash payment to the receiver of the amount due under this proposal of reinsurance and purchase of property shall be made immediately upon the execution and approval of the contract of reinsurance and the transfer and delivery to the Kansas City Life Insurance Company of the assets and property of the Great Western

Life Insurance Company, and a valid assignment by the officers and directors of The Great Western Life Insurance Company of the mortgage notes, investment bonds, etc., comprising the deposit of said company with the Department of Insurance of the State of Missouri, and the approval of said assignment by the Superintendent of Insurance of the State of Missouri. It being understood that the property sold shall be transferred to this bidder free from the lawful claims of all persons whomsoever, except the liability arising under policies of life insurance issued by The Great Western Life Insurance Company, and in force on the date of the official approval of this bid.

Fourth. There shall be deducted from the amount of this bid a sum equal to the legal reserve on the business in force of The Great Western Life Insurance Company at the date of the official examination of the company by the Insurance Department of Missouri, May 18, 1908, computed on the Actuaries' Table of Mortality at four (4) per cent on preliminary one year term valuation (excepting policies on 10 P. L. and 15 Y. E. plan, and term insurance, valued on full first year's reserve, American Experience Table of Mortality at 3½ per cent interest), and also the deficiency in the net premiums necessary to mature certain forms of policies issued by The Great Western Life Insurance Company, under the requirements imposed by the laws of Missouri, which reserve constitutes the net indebtedness of The Great Western Life Insurance Company to its living policy holders, and amounts to $149,748.95.

Fifth. There shall be a further deduction from the gross amount of this bid of twenty-five thousand eight hundred, three and 45/100 ($25,803.45) dollars, the same being the amount of the renewal premium paid to the Great Western Life Insurance Company since May 11, 1908, which fund is now held by the Receiver for the benefit of the policy holders who have contributed same. Upon the approval of the reinsurance contract, the said sum of $25,803.45 shall be paid to this Company, which, under the terms of said reinsurance contract, shall assume a corresponding liability to said policy holders, and the Company, upon receipt of said renewal premiums, shall at once forward its official receipt to each of said policy holders, acknowledging the payment to this Company of the renewal premiums paid as aforesaid, and the further fact that said payment continues their contracts of life insurance in force to the date of the next premium anniversary.

209 It is understood the amount of cash on hand included in the assets bid for, (excluding the sum of $25,803.45 renewal premium fund), is $33,444.82 and this bid is based on that understanding. Should the case on hand at the time this bid is officially approved, exceed $33,444.82 (excluding any additions to the renewal premium fund on account of premiums paid in the meantime), this bid shall be understood to be increased accordingly, or reduced in a like manner in the event said cash balance is reduced from the amount stated.

Sixth. This bidder respectfully represents that it is a duly incorporated insurance company under the laws of Missouri, and author-

ized to do business in the State of Missouri, and has also been granted licenses to transact the business of life insurance in the States of Kansas, Oklahoma, Texas, Utah, Washington, South Dakota, and the Territory of New Mexico, and that more than 85 per cent of the total insurance in force of the Great Western Life Insurance Company is located in the seven states and territory named.

Seventh. Immediately upon being notified that this bid is accepted, the Kansas City Life Insurance Company will file in court its bond in the penal sum of one hundred and fifty thousand ($150,000.00) dollars, with satisfactory sureties, conditioned that the terms of the policies reinsured, shall be carried out and performed, which bond shall continue in force for one year from the date of the reinsurance contract.

Eighth. In addition to the cash amount of this bid of three hundred thousand ($300,000.00) dollars, the Kansas City Life Insurance Company hereby offers to pay to the Receiver, or upon the order of the court, a further sum annually during a period of five (5) years, equal to one dollar per $1,000. of insurance in force as a renewal commission on the premiums actually paid to the Company in cash during the said period of five years on the business included in said reinsurance contract. Should all of the business of the Great Western Life Ins. Co. continue in force during the said period of five years, the renewal commissions would amount to $23,402.36 per annum, and for the five year period, would amount to more than $100,000.00, thus adding a substantial amount of money for the benefit of the creditors of the Company. Further, should this bid be accepted, and the Receiver should desire, at the end of one year from date, to commute the renewal commissions, the Company will pay in a single case payment, a fair valuation, to be mutually agreed upon, of said renewal commissions for the remaining four years on the business in force at that date. The offer embodied in this paragraph to pay a renewal commission on the business of the Great Western Life Insurance Company is prompted from the fact that this method is almost invariably followed in the reinsurance of solvent companies, and provides a just and equitable basis of compensation for the business transferred.

Ninth. There is enclosed herewith the certified check of this Company, Number 7941, in the amount of one thousand ($1,
210 000.00) dollars, payable to the order of C. S. Jobes, Receiver, in accordance with the requirements of the 'Notice to Bidders.'

Yours respectfully,

KANSAS CITY LIFE INSURANCE COMPANY,

(Signed) By W. W. ANDERSON,
Treasurer.

According to my interpretation of the several bids submitted I regard the foregoing as being the highest and best bid and I recommend that a contract be entered into with the above named company in accordance with the foregoing proposals and bid.

(Signed) C. S. JOBES,
Receiver.

I concur in the above recommendation.

(Signed) W. D. VANDIVER,
Supt. Insurance."

July 28th, 1908.

"Mr. C. S. Jobes, Receiver,
Great Western Life Insurance Company,
Kansas City, Missouri.

SIR:

In compliance with the terms of an official publication advertising the assets and all property of the Great Western Life Insurance Company for sale, and a transfer of its business in force by a reinsurance agreement, the undersigned, the Trans-Mississippi Life Company, respectfully submits the following bid and the terms upon which same is made:

The Trans-Mississippi Life Company, which has duly filed its declaration for incorporation and proof of publication thereof as preliminary to its final incorporation under the laws of the State of Missouri with a capital stock of $100,000.00 and a surplus of $50,000.00, hereby offers to pay $284,898.27 for the purchase of all the property of every kind whatsoever, belonging at this date to the Great Western Life Insurance Company, including the assets in the hands of the Superintendent of Insurance of the State of Missouri which shall be free from any lawful claims or liens whatever. If this proposal to purchase said property is accepted by the Receiver and approved by the Superintendent of Insurance of Missouri and the Honorable Court having jurisdiction in this case, an agreement of reinsurance of the life insurance policies, now outstanding of the Great Western Life Insurance Co., shall be made with this Company under the provisions of which this Company shall assume all liability to said Policy holders. The assumption of such policy holders' liability to take effect as of the date said reinsurance agreement is executed and finally approved.

In making this bid, it is provided that the sum of $25,803.45, comprising the whole amount of renewal premiums, paid on policies in the Great Western Life Insurance Company since May 18, 1908, shall be transferred to the Trans-Mississippi Life Co. at the time said contract of reinsurance is executed and finally approved, together with such additional renewal premiums as may be
211 paid during the interim from the date of this bid to the date of the final approval of the reinsurance agreement, and on account of this Company assuming the liability to such policy holders as have paid the renewal premiums aforesaid, it is stipulated that

there shall be deducted from the gross amount of this bid, said sum of $25,803.45 at the time payment is made to the Receiver hereunder.

The reserve liability on the policies in force of the Great Western Life Insurance Company amounts to $158,725.50, which liability shall be assumed by the Trans-Mississippi Life Company under the terms and provisions of the agreement of reinsurance, so, there shall be subtracted from the gross amount of this bid, the amount of the reserve liability of the Great Western Life Insurance Company on 8,116 policies of life insurance now in force.

For the purpose of preventing a possible misunderstanding with reference to the true intent and meaning of this bid, it is stated that the cash on hand, which is included in the property of the Great Western Life Insurance Co. offered for sale in the official advertisement, consists of the following:

Renewal premium fund—cash, checks and notes.....	25,803.45
Balance in General Fund.....	18,829.34
Receipts on account of new stock subscriptions.....	14,615.48
Total cash on hand.....	$59,248.27

If there is more cash on hand on the date this bid is finally approved and the property transferred, than the total amount above specified, it is agreed that this bid shall be plus such increased amount, and if the balance of cash on hand on that date is less than the above stated figure, $59,248.27, the net amount of this bid shall be reduced by such less amount. In the event there is any difference in the amount of the three funds described in this paragraph, same shall be adjusted upon the basis as indicated in this bid.

In conclusion, this bidder desires to add that one of the potent influences in placing the large volume of business in force of the Great Western Life Insurance Co. was the confidence inspired among the insuring public by the insurance laws of Missouri requiring the registration of life policies and maintaining a deposit of funds with the Insurance Department to guarantee the prompt payment of said policies. Upon the face of every policy issued by the Great Western Life Ins. Co., there appears the official certificate of the Department of Insurance of Missouri, attested by the signature of the Superintendent and the seal of the Department certifying that the policy is secured by a deposit of bonds or deeds of trust on real estate with said Department. The State of Missouri thereby became a party to every policy contract issued by the Great Western Life Ins. Co. and it is the plain duty of the state to the holders of these registered policies in the matter of reinsuring the business, to provide that said state deposit for the protection of policy holders, shall be maintained
212 intact, and increased from time to time, in accordance with the laws of Missouri, and this bidder hereby agrees to maintain such state deposit and to comply with every requirement of the laws of Missouri pertaining thereto. A transfer of the business of the Great Western Life Ins. Co. to a non-resident corporation, will

deprive the Insurance Department of Missouri of the power to enforce the provisions of the law under which said registered policies were issued and upon the faith and credit of the official certificates appearing thereon, such policies were sold. There is a substantial benefit and advantage to the policy holders of the Great Western Life, resulting from a transfer to a new institution with fresh capital and an ample surplus, and this Company being in a position to give active attention to the work of making a reinsurance agreement effective, can keep in force more policies of the Great Western Life than any other bidder. Every annuity certificate holder of the Great Western Life Insurance Company and stockholder of the Great Western Agency Company has been given an opporunity to become a subscriber to the stock of the Trans-Mississippi Life Company, some of whom have availed themselves of the privilege afforded them, and if the duty of taking care of the business of the Great Western Life is entrusted to this Company, we believe it will have the active cooperation of a great majority of the original stockholders and other creditors of the Great Western Life Insurance Company.

Respectfully submitted,

TRANS-MISSISSIPPI LIFE COMPANY,

(Signed) By EDWARD S. NORTH,

Incorporator."

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF, R. E. BROOKS, J. E. KEEL, H. E. ELLISON, L. A. Sherrard, George C. Anderson, A. L. Driggs, F. D. Shellaberger, J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J. S. Engle, P. B. Witmer and Ira Puterbaugh, Complainants,

v.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN Life Insurance Company, O. L. Van Laningham, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall and Julia W. Van Laningham, Defendants.

Proposal of Philadelphia Life Insurance Company for the Purchase of Property and Assets of the Great Western Life Insurance Company and for the Reinsurance of the Policies of said Company.

To C. S. Jobes, Receiver:

The undersigned, Philadelphia Life Insurance Company, hereby respectfully submits its proposal for the purchase of all the property and assets of The Great Western Life Insurance Company and for the re-insurance of the policies of said company as follows:

213 In this proposal, for convenience, the Philadelphia Life Insurance Company of Philadelphia, Pennsylvania, is referred to as the Philadelphia and The Great Western Life Insurance Company of Kansas City, Missouri, as The Great Western.

The Philadelphia desires to re-insure the insurance business of The Great Western and hereby proposes to pay therefor the sum of five dollars and fifty cents ($5.50) per one thousand ($1,000.00) dollars, for all the insurance in force, according to the terms of the policies on the date of acceptance of this proposal; provided that wherever the sum of five dollars and fifty cents ($5.50) for one thousand ($1,000.00) dollars of insurance is in excess of the actual reserve valuation on any policy, only the reserve will be paid on that policy; and further provided that in no event will the total payment for all insurance be less than sixty-five thousand ($65,000.00) dollars, and further provided that The Great Western is to make to the Philadelphia such cash payment of the full actual policy reserve and all other liabilities, under the policy contracts assumed hereunder, as may be required by the Insurance Commissioners of the States of Missouri and Pennsylvania, said valuation to be computed on the American Experience Table of Mortality with interest at three and one-half per centum per annum.

The Philadelphia further proposes to pay in cash within ninety (90) days after the completion of the said re-insurance, the sum of two hundred and forty-three thousand ($243,000.00) dollars for all assets of the said Great Western, clear of every liability and debt whatsoever, said assets to cover all assets placed in the hands of the receiver of The Great Western when he took possession, as well as all income from every source received since, excepting the sum of fourteen thousand six hundred and fifteen ($14,615.00) dollars or about that sum, held or received in trust on account of sale of proposed issue of insurance capital stock of The Great Western.

The Philadelphia further proposes to apply the item of twenty-one thousand ($21,000.00) dollars or about that sum, now held in trust on account of premiums to the payment of premiums on the policies for which they were remitted, thus placing said policies in force; provided, however, that if any policy holder shall, within fifteen (15) days from the date of the acceptance of this bid, object in writing to the application of any premium remitted by him and which is included in the said fund of twenty-one thousand ($21,000.00) dollars to the payment of the premium on the policy held by him, then said amount remitted by him shall be returned to him and the policy held by him definitely cancelled.

The Philadelphia further proposes to maintain with the Insurance Department of the State of Missouri, at all times, securities to the value of the reserve, required under the policies by the laws of that state.

214 The Philadelphia does not propose hereby to assume any obligations of outstanding stock liabilities, accounts payable, death claims or any obligations whatever, except those included in the policy contracts, on policies in force at the time of the acceptance

of this proposal, and the other obligations which are herein explicitly assumed.

The Philadelphia further proposes at the end of each calendar year hereafter to make a complete investigation of the profits derived from the insurance transferred from The Great Western and then in force, and after sufficient profits have been earned to cover the cost of this business to the Philadelphia, twenty-five (25%) per cent of all net profits remaining shall in each year thereafter be payable to the trustee appointed by The Great Western Agency stockholders, who have paid for the stock owned by them respectively in cash and the annuity certificate holders who have paid for the certificates respectively owned by them in cash, for distribution, the said Trustees being solely responsible to The Great Western Agency stockholders and the annuity certificate holders; provided that if the business so transferred shows a loss in any calendar year then said loss shall be carried into the following year or years and deducted from the profits then earned to obtain the net profits.

The Philadelphia further proposes upon the acceptance of this bid to file a bond in the penal sum of one hundred fifty thousand ($150,000.00) dollars with surety or sureties to be approved by the court conditioned that the terms of the policies reinsured shall be carried out and performed, which said bond shall continue in force for a year after such reinsurance.

The Philadelphia herewith presents its certified check for one thousand ($1,000.00) dollars payable to the order of C. S. Jobes, receiver.

All of which is respectfully submitted, this twenty-eighth day of July, 1908.

PHILADELPHIA LIFE INSURANCE COMPANY,

(Signed) By ERNEST M. BLEHL, *Actuary.*"

Endorsed on back: "No. 3367. J. M. Wagstaff, et al. v. The Great Western Agency Co. et al. Report of sale by the Receiver. Filed July 30, 1908. Adelaide Utter, Clerk. Ex J. D. D. D."

Mr. Neel: I offer in evidence the report of C. S. Jobes, receiver in the Wagstaff case, filed October 5th, 1908. And also offer the report of the receiver, C. S. Jobes, filed in the Wagstaff case on July 28th, 1908.

Said documents, so offered and introduced in evidence, were marked, respectively, Exhibits "K" and "L," and are, respectively, in words and figures as follows:

215 EXHIBIT "K."

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF, R. E. BROOKS, J. E. KEEL, H. E. ELLISON, L. A. Sherrard, George C. Anderson, A. L. Driggs, F. D. Shellabarger, J. F. Merrill, Theo. B. W. Seitz, M. D. Berg, W. S. Barr, J. S. Engle, P. B. Witmer, and Ira Puterbaugh, Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN Life Insurance Company, O. L. Van Laningham, E. L. Bierssmith, L. N. Paquin, James E. Smith, Joseph T. Kendall and Julia W. Van Laningham, Defendants.

Report of C. S. Jobes, Receiver.

To the Honorable the Judges of the United States Circuit Court within and for the Western Division of the Western District of Missouri:

C. S. Jobes, Receiver herein, respectfully makes known and represents to the court that in pursuance of an order heretofore made herein, on the 27th day of August, 1908, by His Honor, Smith McPherson, J., the then officers and directors of the defendant, The Great Western Life Insurance Company, theretofore elected under the original order made herein by his Honor, Judge Pollock, resigned from and vacated their respected offices, and thereupon, and in pursuance of the order made herein by His Honor, Judge McPherson, the following named gentlemen were elected as officers and directors of said The Great Western Life Insurance Company, namely: George Stevenson, Jr., of Waterville, Kansas, president and director; James Chappelle of Topeka, Kansas, secretary, treasurer and director; W. T. Kemper, J. J. Heim and J. H. Harris of Kansas City, Missouri, Edward T. Schermerhorn of Wilson, Kansas, F. M. Pearl of Hiawatha, Kansas, George E. McIninch of St. Joseph, Missouri, and P. H. Rea, of Marshall, Missouri, directors; and in further pursuance of said order your Receiver herein made a complete inventory of all the properties, monies, credits, books and effects of every kind or nature then in his possession or under his control, or in the possession or control of the then officers and directors of said Company received from said The Great Western Life Insurance Company or acquired in its behalf, together with the shares of stock of the said The Great Western Life Insurance Company held by the directors and officers selected under the original order of the court herein, and thereupon and without delay turned over and delivered all of said property, in-

cluding said shares of stock, to the officers and directors of the said The Great Western Life Insurance Company elected under the said order of August 27, 1908, and took the receipt of the president and secretary of said company therefor, which receipt of said president and secretary is herewith filed and made a part of this report; the amount in money turned over at the time, being the net sum
216 of $67,222.23, which had been received at the time of the appointment of and accumulated by your Receiver and the former board of directors pending the receivership to that date; that in further pursuance of the requirements of said order of August 27, 1908, Your Receiver sold at private sale to James Chappelle, trustee, in trust for the purchasers of the stock of The Great Western Life Insurance Company at the upset price of $11,000 and as the property and assets of The Great Western Agency Company, 992 shares of the capital stock of said The Great Western Life Insurance Company, subject to the lien and equities on 445 shares of said stock in favor of the National Bank of Commerce of Kansas City, Missouri, for the payment of $21,000, and surrendered and delivered to him, the said James Chappelle, Trustee, all of said capital stock held by him and duly assigned the same to said James Chappelle, Trustee. The bill of sale and assignment thereof, duly executed by your Receiver, and acknowledged by the said James Chappelle, Trustee, is hereto attached and made a part of this report.

And in further pursuance of said order, Herman F. Lang, the then treasurer of said The Great Western Life Insurance Company, as re-organized, the sum of $32,870.47 in cash and $5,206.79 in notes, which were held by him as trustee, and the receipt therefor of the said The Great Western Life Insurance Company, by George Stevenson, Jr., its president, is hereto attached and herewith filed as a part of this report.

In further pursuance of said order your Receiver has charged against said sum of $11,000, received as the purchase price of said stock, the sum of $2,500, which was allowed him by said order, and out of said sum, and in pursuance of the requirements of said order, has paid his solicitors, F. P. Sebree and E. L. Scarritt, the sum of $3,000; and J. B. Case, the president of the said The Great Western Life Insurance Company, elected by the order of Judge Pollock heretofore made herein, the sum of $1,200; and Herman F. Lang, as treasurer of said Company similarly elected, the sum of $350; and each of the nine directors of said company, similarly elected, the sum of $100 each, aggregating $900; and to Messrs. Patterson & Crawford, for the examination of the Agency and Life affairs, the sum of $904.17, the receipts for said several amounts being hereto attached and herewith filed as a part of this report.

And in pursuance of the further order of this court herein, made on the eleventh day of September, 1908, your Receiver has paid out of said $11,000 the further sums as follows:

Jackson County Court costs, $125.00; Officers (office) expenses, $342.50; Rent for August, 1908, $829.00; Cash items, $74.19, the receipts wherefor are hereto attached and herewith filed as a part of this report.

The amount of the item of $315.00 in said order of September 11, 1908, referred to as "Denver, Colorado Receiver on account of costs in the Colorado Court," is erroneous as it should have been $354.62, according to the claim and account presented by
217 the Colorado receiver, and your Receiver requests that he be required to pay the said amount of $354.62 instead of $315 as mentioned in said order, and take the receipt of the said Colorado receiver therefor and file the same herein as a part of this report, whereupon your Receiver will have paid out of said $11,000 the sum of $10,580.14, leaving in his hands of said amount the sum of $420.52.

Your Receiver further reports a detailed statement of all the money received and paid out by him from the time of his appointment as Receiver herein to the present date, which detailed statement is hereto attached and herewith filed and made a part of this report.

All of which is respectfully submitted by your Receiver for the approval of the court.

C. S. JOBES,
Receiver.

(Here follows reports, receipts, etc., referred to in said Report of Recorder.)

Filed October 5, 1908.

ADELAIDE UTTER,
Clerk.

EXHIBIT "L."

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY et al., Defendants.

Pursuant to the court's order herein respecting the books and affairs of the Great Western Agency Company, the undersigned Receiver has caused the same to be examined and audited by accountants, H. E. Patterson and his assistant, L. U. Crawford, and supplemental to Receiver's report heretofore filed on July 6, 1908, there is herewith submitted the detailed report of said accountants

for the court's information and for the information of all parties interested.

July 28, 1908.

Respectfully submitted, C. S. JOBES,
Receiver.

(Here follows report above referred to.)

Filed July 28, 1908.
ADELAIDE UTTER,
Clerk.

W. H. McBRIDE, called as a witness on the part of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Neel:

Q. Please state your name?
A. W. H. McBride.
Q. What is your age?
A. Forty-one.
Q. Where do you live?
A. St. Louis.
Q. What is your business?
A. I am an actuary.
Q. What insurance company?
A. Central State Life of St. Louis.
218 Q. Where were you located in 1908?
A. I was here in Kansas City with the Great Western Life Insurance Company.
Q. How long have you been with the Great Western Life Insurance Company?
A. Since early in May, 1907.
Q. And did you continue to be with them up to the time of the receivership?
A. Until past that time. Until the reorganization was effected.
Q. You were with the Great Western Life Insurance Company until the receivership and thereafter with the company during the reorganization and litigation?
A. Yes, sir.
Q. Well, were you with the company after that, too?
A. Until, I think it was, November, 1908.
Q. Then did you go to St. Louis from here or continue in Kansas City?
A. No, sir, I went to St. Louis.
Q. While you had your connection with the Great Western Life Insurance Company, and during its reorganization and thereafter, were you present at any session of the Federal Court in reference thereto?
A. Yes, sir.

Q. Were you present at any meeting held by the annuity certificate holders and the stockholders?

A. Yes, sir.

Q. Did you have an intimate connection with all general meetings, assemblies and proceedings that were had with respect to the reorganization and receivership?

A. Yes, sir.

Q. Do you know whether or not printed copies of Judge McPherson's remarks, that have been offered in evidence here, were sent out to the annuity certificate holders and stockholders of the company?

A. They were.

Q. Where did they get the names and addresses, do you know?

A. From the record kept at the office of the Great Western Life Insurance Company.

Q. And were they postage prepaid and deposited in the United States mail?

A. Yes, sir.

Q. And thereafter was the decree, the printed decree such as is shown here by Exhibit "C" attached to the stipulation and testimony of Mr. Chappell, after the decree was rendered August 27th, 1908, was that likewise, postage prepaid, deposit in the United States mail and copies of it sent to the annuity certificate holders and stockholders of the company?

A. Yes.

The Court: When, with reference to the date of the decree?

A. The decree was rendered August 27th, and just as soon as it could be reduced to type and inclosed in envelopes it was sent out. I could not say the exact date, but we worked night and day on all of that work.

Q. What would you say would be the outside days that was taken up before it was mailed?

A. Well, I should say not to exceed three days.

Mr. Landon: I want to move to strike out, at this time, the testimony of this witness, Stevenson, regarding mailing out copies of this decree, as in no way binding on the parties in issue in
219 this case, it appearing that the same was sent out long after the decree was made and filed in the court.

The Court: Motion overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Q. Did you get any reply to those letters and circulars that you sent out?

A. Yes, sir.

Q. I will ask you if this paper, dated August 17th, 1908, Kansas City, Missouri, was also mailed to the annuity certificate holders and stockholders, as you have testified in respect to the decree of Judge McPherson?

A. Yes, sir.

Mr. Neel: I offer this paper, marked Exhibit "M," in evidence.

Mr. Landon: This Exhibit "M" is objected to for the reason it is incompetent and immaterial, in no way binding upon the parties in interest in this case, and merely the opinion and self-serving declarations of the writer, who purports to be James Chappell, and not within any of the issues in this case.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said document, so offered and introduced in evidence, marked Exhibit "M." is in words and figures as follows:

EXHIBIT "M."

"Office of

Chairman Stockholders Reorganization Committee,

Great Western Life Insurance Co.,

R. A. Long Building, Kansas City, Mo.

Kansas City, Mo., August 17, 1908.

Mr. D. O. McCray,
Topeka, Kans.

DEAR SIR:

As you will see by the enclosed copy of transcript of the proceedings of the Federal Court, the stockholders and annuity certificate holders of the Great Western Life Ins. Co. have been granted an additional ten days in which to make good the impairment of the Great Western Life Insurance Company.

The responses which came to our letter of the 5th inst. were so gratifying, and showed such a deep interest on the part of the owners of this company, to maintain and continue the same, that the judge granted this extension in the hope that we may be able to meet, at the end of that time, every obligation, and take the Company from the hands of the receiver in better shape than it has ever been before, and with the Van Laningham administration forever eliminated.

220 You are the owner of 1 shares of Annuity certificates. If you desire to protect your interest in this company, by surrendering an intangible, and possibly illegal, contract and purchasing a tangible and legal one, which gives you the right to participate in the control of the company by the ownership of stock in the company, the value of which is indicated in the remarks by Judge McPherson, it is not only important, but it is essential that your annuity certificates be sent to Hon. Mark Tulley, chairman of the Board of Trustees of the Reorganization Committee, to reach him not later than Aug. 24th. But best do it now, with your assignment of the same to him. If you are unable to send the cash (which must

be certified checks or drafts), which this Committee has assessed you, and which amounts to $37.50 at the rate of $37.50 per share of your holdings, send in your annuity certificate, assigned, and if you find that you are absolutely unable at this time to raise the money, the Reorganization Committee, in consideration of your assignment of annuity certificate, will send to you a negotiable option, giving you the right to purchase stock in this company to the extent of your assessment and at the rate of $200.00 for each $100.00 share of stock within ninety days from the date of the dissolution of the receivership. The stock in the reorganized company will be so valuable that your option to purchase it can undoubted- be sold if you so wish, and at least a part of your losses regained.

You will understand that the success of our reorganization depends almost entirely, at the present time, upon the release of these annuity certificates as a liability, and you are to understand that in the event of the sale to the Kansas City Life, your certificate is not worth the paper upon which it is printed; while this plan will not only protect you in your rights, but gives you an opportunity to recoup your losses, and should you find yourself unable to avail yourself of your option, we have no doubt whatever as to your ability to sell your option to people who are even now desiring to purchase the stock of this Company, which we are holding for the benefit of the annuity certificate holders and others who have already lost their money.

Don't fail to give this your immediate attention, sending certificates, as well as money, to Hon. Mark Tulley, care of Copeland Hotel, Topeka, Kansas.

Yours truly,

(Signed) JAMES CHAPPELLE,
Chairman of Reorganization Committee."

By Mr. Neel:

Q. Now, I show you a paper here written on the letterhead of the Great Western Life Insurance Company, entitled "Fair Play," and I will ask you whether or not that circular letter was also mailed out as you have testified in respect to these others things that
221 were mailed out to the annuity certificate holders and stockholders (handing witness document)?

A. It was, yes, sir.

Mr. Neel: I offer this in evidence, and ask it to be marked Exhibit "N."

Mr. Landon: You mean you offer both sides in evidence?

Mr. Neel: I am going to offer the other side in evidence in a few minutes. I offer the typewritten side now.

Mr. Landon: This Exhibit "N" as now offered is objected to for the reason it is incompetent and immaterial, not within any issue in this case and in no way binding on the parties in interest in the present suit.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said paper, so offered and introduced in evidence, marked Exhibit "N," is in words and figures as follows:

EXHIBIT "N."

"Great Western Life Insurance Co. of Kansas City, Mo.

Every Policy Secured by Deposit of its Full Cash Value with the State of Missouri.

Fair Play.

There is being sent into this office by Annuity Certificate holders a letter from J. G. Strean Investment Company, dated August 31, 1908, in which they ask you to join in an effort to wreck your own property, and pay them for doing it. On the other hand, we ask you to save a large and valuable business, which in time will be profitable to you. Which of the two is the more honorable proposition? What would you have received, or what would the prospects have been if the sale had been made to the Insurance Company that was recommended by the Receiver and others?

Now, in view of that, the Reorganization Committee set to work and saved to you what must have been a valuable business; at least other insurance companies thought so, but the court said it was your property, and no one else had a right to it but you, if you would pay its debts, and that is being done at this time. It is easy for any fair-minded man to recognize his obligation by paying his assessment and receiving a fair and equal proportion of the only real stock you have ever been given an opportunity to purchase.

The Court asked counsel, who claimed to represent Annuity Certificate holders, to offer a better plan if they could for reorganization, but under his questioning they were silent, and no other plan was offered or suggested.

The time is short and every man who has paid his assessment is anxious to have everyone who has a dollar invested, either in
222 Agency stock or Annuity Certificates, to come in and take an interest in this Company, which will be free from every entanglement and cannot be criticised as it has been in the past. It will pay every just obligation in full, and be a greater and better Company than it ever has been. No feature contained in any policy written by this Company will be changed, but will be carried out to the letter.

Send in your Agency stock and Annuity Certificates for cancellation and your assessment at once. Do it to-day.

Yours truly,

(Signed) JAMES CHAPPELLE,
Chairman Reorganization Committee."

By Mr. Neel:

Q. Was this reply, written on the back of this Exhibit "N," received to the letter on the other side of the exhibit?
A. Yes, sir.

Mr. Neel: I offer that in evidence.

By Mr. Landon:

Q. You don't know anything about who wrote that, do you?
A. No, sir, I could not identify the signature.
Q. You just simply testify it was a reply because it appears on the back, is that right?
A. Yes, sir.
Q. You don't know anything about the party's handwriting, or anything about it?
A. No, sir.

Mr. Landon: Now, I object to this exhibit as not the best evidence and incompetent and immaterial, in no way binding on the parties in this case.

By Mr. Neel:

Q. I understand you testify you don't know the signature of Mr. Hinshaw?
A. No, sir.
Q. You do know that this circular letter, together with other circulars of the same kind, were mailed to all certificate holders?
A. Yes, sir.
Q. And you do know that this came back to the company with this written on the back of it, and with the signature that appears there signed to it?
A. It shows the company's receiving stamp on there, which is familiar to me.
Q. That is the fact, you know that?
A. Yes, sir.

By Mr. Landon:

Q. Are you testifying from memory or simply from the course of business in the office?
A. From both.
Q. Did you personally see those letters?
A. All of the work was conducted under my supervision.

By the Court:

Q. Do you know to whom that letter was addressed?
A. I could not tell from this side of it.
Q. You don't know whether Mr. Hinshaw got that letter or not?

A. Except for the fact he replied to it. He could not have
223 put his name on the back without having received the letter.

Q. Do you know of your own knowledge this letter was mailed to Mr. Hinshaw?

A. Concerning any individual letter, of course, I could not answer. I only know, as I explained before, that we sent all of these communications to all of the people whose names stood on the books as holders of these certificates.

Q. Do you know of your own knowledge that one was sent to Mr. Hinshaw?

A. I didn't enclose them myself.

By Mr. Neel:

Q. As I understand you, Mr. McBride, you know from your office, the office of the Great Western Life Insurance Company, notices such as that, labeled "Fair Play," Exhibit "N," were mailed to all the certificate holders that held these annuity certificates?

A. Yes, sir.

Q. And you know Mr. Hinshaw was one of those annuity certificate holders, do you not?

A. No, sir, I do not know it from memory.

Mr. Neel: I offer to supply that testimony from the records of the company that he was, and in the petition in this case it is alleged by the plaintiff he was.

By the Court:

Q. Who mailed these letters?

A. The clerks under my supervision.

The Court: I think the personal knowledge of this witness in this instance is limited to the order he gave to his clerks.

Objection sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

Mr. Neel: I offer it in evidence on the ground it is a reply.

The Court: You first have to establish that the circular was mailed.

Objection sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

Said document, so offered and sought to be introduced in evidence, but which was refused by the court, was marked Exhibit "O," and is in words and figures as follows:

EXHIBIT "O."

"I am not with Strean for they are charging an exorbitant fe
However I think the Annuity holders have a cause for action. F

dently all the property of the Co. was bought with their money and yet we are asked to surrender our certificates gratis—only offered an opportunity to buy stock at 100% more than it is worth.

Myself and father have ten shares certificates. What will you give me for them. $1,500 worth.

224 I am going to realize on them some way either through an Atty. or sell them to some of the reorganizers.

Yours Resp't.,

(Signed) O. G. HINSHAW."

Mr. Neel: Now, if Your Honor please, as bearing on this proposition generally, and on the petition of the plaintiff generally in this case, and merely as an illustration of other counts of the petition, I want to offer in evidence this annuity certificate that was No. 83 and that is covered by Count 17 in this petition, issued to J. F. Mathews, and also the release, that J. F. Mathews signed, of his certificate.

Mr. Landon: That is objected to for the reason it is immaterial, that count has been dismissed.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said documents, so offered and introduced in evidence, were marked, respectively, Exhibits "P," "Q" and "R," and are, respectively, in words and figures as follows:

225 By Mr. Neel:

Q. Now, Mr. McBride, I will ask you what this is (handing witness document)?

A. This is an annuity certificate release——

Mr. Landon (interrupting): I object to the witness testifying unless it is from his personal knowledge. He has a paper that purports to be signed, that he don't know anything about. The paper speaks for itself.

The Court: He can state what the instrument is without identifying the signature.

Mr. Neel: That is what I was asking.

The Court: Just give the name to that instrument.

A. It is an annuity certificate release.

Q. Do you know whether Gertrude Pendleton was one of the annuity certificate holders?

A. No, sir, I don't recall the name.

Mr. Neel: I want to offer this in evidence.

Mr. Landon: Let's see it.

Mr. Neel: Have you got her assignment?

Mr. Landon: I could not find her assignment, but we had some letters from her in reference to it. I don't want any question about it, I will just dismiss as to Count 23. If it appears there has been

anybody in the organization that we represent here, that have surrendered their certificates, very well and good. But her certificate is here. Mr. Chappell said nobody got stock except those who had paid their money and surrendered their certificate.

The Court: This is count 23?

Mr. Landon: Yes, sir, let it go out.

Q. You don't know Charles Curtis' signature, do you?

A. No, sir.

Q. Do you know whether he was an annuity certificate holder?

A. He was sufficiently prominent for me to remember quite distinctly he was a holder of one of those certificates.

Q. Do you know whether the company received that letter in answer to one of these notices in reference to the re-organization, that was sent out (handing witness document)?

A. It does not bear any mark of identification, such as the other one did, by which I could testify to that particular document.

Q. Who is it addressed to?

A. This is addressed to James Chappell, Esq., Copeland Hotel, Topeka, Kansas.

Q. Who was Mr. Chappell?

A. Mr. Chappell was known variously as the trustee or chairman of the re-organization committee.

Q. Were you present when he was elected trustee?

A. Yes, sir.

Q. Where was that?

A. I won't say as to whether or not the title "trustee" was conferred upon him at that time.

226 Q. When he was selected to represent some of these annuity certificates?

A. That was at the Copeland Hotel, Topeka, Kansas.

Q. How largely was that meeting attended?

A. A room about the size of this, that was filled.

Q. What was the nature of the discussion at that time?

Mr. Landon: Objected to as incompetent and immaterial, in no way binding upon the parties in issue in this case.

By the Court:

Q. You don't know whether any of these annuity certificate holders were present or not?

A. No, sir, I could not mention the names of those who were present.

The Court: Objection sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

By Mr. Neel:

Q. Now what date does that letter bear?

A. This letter is dated August 24th, 1908, at Topeka, Kansas.

Q. Do you know whether that was after the remarks of the judge and the Fair Play letter were mailed?

Mr. Landon: I object to that as calling for a conclusion of the witness.

Mr. Neel: On the theory that, under the testimony of this witness, Mr. Charles Curtis was one of the annuity certificate holders, and that these circulars were mailed to all of them, and that this letter was addressed to Mr. Chappell, who was selected by some of the annuity certificate holders to represent them, I want to offer in evidence this letter from Mr. Curtis.

The Court: It will have to be identified.

Mr. Neel: It can't be identified any other way. That is the extent of the identification.

Mr. Landon: Put it in, it don't make any difference any how.

Said letter, so offered and introduced in evidence, was marked Exhibit "S," and is in words and figures as follows:

EXHIBIT "S."

"Charles Curtis, Kans., Chairman.
Charles Dick, Ohio, T. S. Martin, Va.
W. P. Dillingham, Vt. A. J. McLaurin, Miss.
T. C. Platt, N. Y. Jeff Davis, Ark.
J. A. Hemenway, Ind. J. F. Johnston, Ala.
J. M. Dixon, Mont. R. L. Owen, Okla.
T. P. Curtis, Clerk.

United States Senate,

Committee on Indian Depredations.

Topeka, Kansas, Aug. 24th, '08.

MY DEAR CHAPPELLE:

Answering your letter of recent date, I do not care to put any more money in the Great Western Life Insurance Company.
227 If it will be of any service to you, I will turn the bonds or stock I hold over to you.

With personal regards, I am,

Very truly yours,

(Signed) CHAS. CURTIS.

JAMES CHAPPELLE, Esq.
Copeland Hotel, Topeka, Kansas."

Mr. Neel: This is introduced on the proposition of personal notice to Mr. Curtis.

Mr. Landon: What is the object of mailing out this decree and the views of Judge McPherson and these other letters?

Mr. Neel: First, as to notice, to show constructive notice to the parties, and as far as possible I was showing actual notice.

Mr. Landon: That is, that such notice would be binding on them as to action taken in the Federal Court?

Mr. Neel: I want to show they had actual notice of the action taken in the Federal Court, and as to the said plan of reorganization.

Mr. Landon: For the purpose of showing they were bound by the decree?

Mr. Neel: To show they had actual notice. To show they had notice—whatever these letters say, they are different. One says one thing and another another. We want to show the notice they had.

The Court: Do you represent the Curtis certificate?

Mr. Landon: Yes, sir; that is covered by Count 32.

Mr. Neel: I want to offer in evidence the letter from G. Elliott of date September 5th, 1908, to Mr. Mark Tully of Topeka, Kansas, together with a letter from Mr. Mark Tully enclosing that letter to the Great Western Life Insurance Company, dated September 9th, 1908, together with a copy of the reply from the secretary and treasurer of the Great Western Life Insurance Company to Mr. Garnett Elliott, dated September 14th, 1908.

Mr. Landon: To which objection is made; first, because not properly identified; and, second, wholly incompetent and immaterial as to any issue in this case, and showing on their face they were written long after the decree was entered.

Mr. Neel: I thought he wasn't going to object to the identification.

The Court: The letters have not been identified. Objection sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

Said letters, so offered and sought to be introduced in evidence, which were refused by the court, were marked, respectively, Exhibits 20, 21 and 22, and are, respectively, in words and figures as follows:

228 EXHIBIT "20."

Wells Fargo & Company Express.

"To Hon. Mark Tulley,
Topeka, Ks.

Goddard, Ks., 9-5, 1908.

DEAR SIR:

I own 10 shares of annuity stock in the Gt. Western Ins. Co. and 100 shares of Great Western Agency stock both of which you are endeavoring to save for us. I do not feel able to advance $775.00 additional just now to recover the $3,100.00 invested. Could you advise what I can realize out of my stock to dispose of it before the limit of time. I would like to call on you & have a talk but cannot get away.

If you are acquainted with Mr. Morton Albaugh & you have opportunity to speak to him he will tell you who I am. I cannot afford to loss this money. Your earlies- advise will be highly appreciated.

Fraternally,
(Signed) G. ELLIOTT."

EXHIBIT "21."

"State of Kansas.

Ad Astra per Aspera.

Executive Department,

Office of Treasurer of State.

Mark Tulley, Treasurer.

W. G. Shirey, Assistant Treasurer.

W. L. Payne, Special Asst. Treasurer.

Topeka, Sept. 9, 1908.

Great Western Life Insurance Company,
Kansas City, Missouri.

GENTLEMEN:

Enclosed please find Mr. Elliott's letter to me in regard to Great Western matters. If you can do anything for him or make any suggestions that will help him out, I wish you would do so.

Yours truly,
(Signed) MARK TULLEY."

EXHIBIT "22."

"Sept. 14, 1908.

Mr. Garnett Elliott,
Goddard, Kansas.

DEAR MR. ELLIOTT:

I have before me your letter dated Sept. 5th, which has been forwarded to me by trustee, Mark Tulley, from Topeka, and in reply to same beg to advise that if I were in your place I would
229 arrange with my local banker to borrow the money necessary to meet your assessment. I would be glad to extend to you the privilege of sending us a note, but at this writing we are loaded down with paper that is useless to us, because of the fact that it is not negotiable with the banks, nor is it accepted as an asset by the insurance department of this state.

I am personally very well acquainted with Mr. Albaugh and feel sufficiently obligated to him to warrant extending any favor within my power to him or any friend of his, but with regard to carrying more paper, it is too hazardous for this newly organized institution

to attempt to add to the load that it is carrying in this way. I sincerely trust that you will be able to meet the assessment and save your former investment, and would be pleased to hear further from you at your early convenience.

The time limit on the annuity certificates expires on the 17th, but the limit on the agency stock runs until Oct. 26th.

Thanking you for your letter, I am,

Yours very truly,

_____,

Secretary & Treasurer."

By Mr. Neel:

Q. Who was the secretary and treasurer of the Great Western Life Insurance Company September 14, 1908?

A. I don't recall who was treasurer, unless the duties were performed by the secretary, Mr. Chappell. Mr. Lang was treasurer under the receivership.

Mr. Neel: Let's see your assignments of these certificates. Let's see the Imbrie assignment. Let's see the Garnett Elliott assignment.

(Papers handed to counsel.)

Q. Does your business require you to have to do with writing? Any inside clerical work?

A. At the present?

Q. Yes, sir.

A. Some, yes, sir.

Q. I will get you to look at the signature of Garnett Elliott on this assignment here and see if you can identify this signature on this Exhibit 20 as the same signature.

(Witness examines signatures.)

A. In my opinion they are not the same.

Mr. Neel: I offer in evidence Exhibits 23 and 24, which I understand are not objected to because not identified.

Mr. Landon: Of course, I don't want that to go as any precedent. It is objected to for the reason it is wholly immaterial to any issue in this case. Just simply a lot of stuff I don't believe bears one way or the other. I didn't examine it.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said documents, so offered and introduced in evidence, marked respectively Exhibits 23 and 24, are respectively in words and figures as follows:

230

EXHIBIT "23."

"W. T. Embree, D. D. S.,
Rooms 1 and 2,
New Baxter Building.
Office Phone 568.

Pittsburg, Kansas, Aug. 22, 1908.

Mr. James Chappelle,
Topeka, Kans.

DEAR SIR:

I have just read your letter of recent date addressed to Mr. W. A. Swan, of this city, wherein you say you would not take $1,000 a share for your interest in the Great Western Life Insurance Company as it now stands. As chairman of reorganization committee you are in possession of facts that I am holder of five shares of stock and two annuity certificates in this same company.

I will assign to you my five shares of stock and the annuity certificates for $100. If accepted, please wire money to any bank in Pittsburg, and I will make assignment and return papers in time for use on the 25th. Please oblige me by immediate reply.

Yours truly,
(Signed) W. T. EMBREE."

EXHIBIT "24."

"Aug. 26, 1908.

Mr. W. T. Embree,
Pittsburg, Kansas.

DEAR SIR:

Replying to your letter of Aug. 22nd, will say that I had originally $1,600 invested in Great Western securities. After the receiver was appointed, I met an assessment of $400, which makes $2,000, since which time I have added $2,000 more to help put the company on its feet. I do not feel that I am financially able to invest further, and wish to call your attention to the fact that these companies at this time are declared to be insolvent, and in the face of this fact, you must know that your stock without participating in the assessment is not of much value. The thing for you to do in my judgment is to get in line and assist us in this reorganization.

Yours very truly,

Chairman Reorganization Comm."

Mr. Neel: I offer in evidence Exhibit 20, on the ground it is identified sufficiently by comparison of the signature to the Exhibit 20 with the signature of Garnett Elliott to the assignment on which one count of the petition is brought.

Mr. Landon: Objected to as wholly incompetent and immateria The evidence does not show that the purported exhibits were signed executed by Garnett Elliott—this letter, Exhibit 20.

231 The Court: I am not satisfied in my own mind that th signatures are identical. Objection sustained.

To which ruling and action of the court the defendant then an there at the time duly excepted and still excepts.

Q. Mr. McBride, will you kindly compare the signature of Joh C. Goring on the bottom of that letter, and tell me whether or n they are the same signature (handing witness documents)?
A. I could not pronounce them the same.

Mr. Neel: Let's submit them to the court.
The Court (examining signatures): The court can't help you an on it.
Mr. Neel: I offer in evidence, in connection with the assignment Joseph T. Lafferty, on Count 73 in the plaintiff's petition, a lette bearing the name of J. T. Lafferty, dated September 15th, 1908 identifying the signature by comparison, the signature of the lette with the signature of the assignment.
Mr. Landon: You are offering Mr. Chappell's letter, too?
Mr. Neel: Yes, the reply to it.
Mr. Landon: I object to the letter signed J. T. Lafferty, for th reason it is wholly incompetent and immaterial to any issue in thi case, and not within the issues; and I further object to the reply purporting to have been written by Mr. Chappell to Mr. Lafferty dated September 18th, for the reason it is wholly incompetent and immaterial to any of the issues in this case, and self-serving declarations of the writer and of the company, and an opinion.
The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said documents, so offered and introduced in evidence, were marked, respectively, Exhibits 25 and 26, and are, respectively, in words and figures as follows:

EXHIBIT "25."

"Wm. P. Hackney. Joseph T. Lafferty.

Law Offices

Hackney & Lafferty,

Winfield, Kansas.

Sept. 15, 1908.

Mr. James Chappelle,
Great Western Life Ins. Co.,
Kansas City, Mo.

DEAR CHAPPELLE:

I have yours of the 14th and the same is not clear to me. What I wanted from you was, what different position I would be in by putting up $112.50 and getting one-half that amount in stock from any other person who would buy stock in this institution.

I don't question but what the concern, if properly managed, will make some money, but at the same time, what I want to be satisfied about is that I have something of value when I pay two dollars a share for it, and something more than I could have gotten by having no interest whatever in the annuity certificates.

Let me hear from you, and if you can make it clear to me that it will be advantageous to pay the $112.50, I will do so.

Very truly yours,

(Signed) J. T. LAFFERTY."

J. T. L.—P. S.

EXHIBIT "26."

"Sept. 18th, 1908.

Mr. J. T. Lafferty,
Winfield, Kansas.

MY DEAR LAFFERTY:

Replying to your letter dated Sept. 15th, I would like to make this comparison.

If you built a building that cost a million and a half and after it was built you found that it was a good investment or rather believed it would be a good investment before you built it and your belief would be confirmed after it was up and rented and allowing that you use natural gas for heating the building and you had an explosion that would blow out all your windows and damage the building to the tune of $200,000.00, would you fix it or let it go by default and be sold for taxes? This is about the proposition that we have had on our hands here.

Your annuity certificates are held as worthless as is also the stock of the Agency Company, but by paying your assessment the capital

stock of the Life Company is reissued upon a basis of two for one or for every $200.00 received in assessments one share, the par value of which is $100.00 will be issued. This is the only logical plan of reorganization. The stock is not for sale to anyone else or through any other source at this time.

Trusting that I have covered the point asked for in your letter, I am,

Yours very truly,

____ ____,

Sec. & Treas."

Mr. Neel: What about this Rowell letter?

Mr. Landon: I object to the letter for the reason it is not properly identified and for the reason it has no bearing upon any issue in this case.

Mr. Neel: What about this John C. Goring letter?

Mr. Landon: We object to it.

Mr. Neel: On the ground it is not properly identified?

Mr. Landon: No, but on the ground it is wholly immaterial to any issue in this case.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

233 Mr. Neel: I will read this letter from John C. Goring to James Chappell, dated September 10, 1908, and the reply dated September 12th, 1908, to John C. Goring.

Said letters, so offered and read in evidence, were marked, respectively, Exhibits 27 and 28, and are, respectively, in words and figures as follows:

EXHIBIT "27."

"Moundridge, Ks., Sept. 10th, 1908.

Mr. James Chappelle,
Kansas City, Mo.

SIR:

Concerning the Great Western Life Ins. Co.'s affairs, will say that I do not feel like complying with the decision of Judge McPherson, for I do not think that decision is a just one. Just tell me what become of the $300,000.00 paid in by the Annuity Certificate Holder and the money out of the 24 Million Dollars Insurance business done through the year, did Mr. Laningham steal it? If not there is only to my judgment only one way that such result could be the outcome, in that case there must be undoubtedly a whole lot of discrimination be done in favor of the big against the little, that is, the little or poor that only hold one or 2 shares had to pay in full, where the big or rich must have gotten a certain percentage free gratis also in the premiums I suspicion that the big or rich which carry a big Ins. did not pay their premiums in full, so there was no $300,000.00 paid in

and the business must have been done on the expense of the small. It surely ought to be possible to ascertain from the Books of the Comp. whether these are facts or not, and if these are the facts which there is no doubt in my mind that they are, why did Judge McPherson not rule in behalf of the poor, which are according to his decision are -nocked out entirely for they will not have the money to pay their assessment, to my opinion it is a decision in favor of the rich which took the advantage in the first place, and now are given the advantage by the court again.

I could pay the assessment but do not feel like paying until this discrimination is straightened out and the poorer class in the deal get their rights. If nothing is done, and the matter is not fought through the higher courts, of course I will be one of those who are loosing their entire investment, but I rather loose it than have a hand in an unjust concern, which under circumstances can not and will not prosper, there is one thing certain my little influence will have to go against it. Why just think of it, the man who steels one chicken which is worth 25c. is put behind the bar, but if there is thousands of Dollars squandered dishonestly in a way like this, it seems there is no law for it; and Why? I can only draw one conclusion, because it is dishonestly used for the benefits of a richer class. What the outcome finally will be is not hard to understand.

234 Excuse my open criticism. I thought it would be best for me and for others concerned in the matter to do this.

Yours Respectfully.
(Signed) JOHN C. GOERING."

EXHIBIT "28."

"Sept. 12, 1908.

Mr. John C. Goering,
Moundridge, Kansas.

DEAR MR. GOERING:

I have before me your letter dated September 10th, and in reply to same beg to advise that the $300,000.00 referred to in you- letter as being received from the sale of Annuity Certificates, besides the $500,000.00 received from the sale of Agency Stock, and the $750,000.00 received as premiums on first year's insurance (these figures are round and not particularly accurate), have all been spent in the promotion and upbuilding of this business. In any insurance business the first year's revenue and part of the second year's revenue is all spent, as you can readily understand, for the promotion of the business. There are a great many intricacies connected with the reorganization of the Company that I could better explain to you in person than by letter, but briefly stated the situation with the Great Western Life Insurance Company is this:

A man named Van Laningham conceived the idea of writing insurance through a brokerage concern called The Great Western Agency Company. After a short time the Agency Company saw fit

to abrogate the contract upon which they were doing business, and organize and operate a company to be owned by the stockholders of this Agency Company, or the Great Western Life Insurance Company.

The stock of the Great Western Life Insurance Company was held by trustees appointed by the directors of the Agency Company for the Agency Company stockholders. Part of this stock was hypothecated and used as collateral security for a loan for $21,000.00 borrowed from the National Bank of Commerce, and this one item is virtually the load that 'broke the camel's back.' It is true that we find some evidence of extravagance and mismanagement under the former regime, but this is only my opinion and I do not claim to be infallible in the judgment of men, but it must be conceded to the former management as building up one of the most magnificent institutions ever constructed in the history of life insurance in this length of time.

The plan to wreck the Company (and the wreckers are the ones at whom your criticisms should be directed, rather than any Court or wealthy class), made very careful plans to wreck this institution for its legal reserve. As to the class of people connected with this institution, we have no wealthy class. We have 1,350 stockholders scattered over twenty-two states, and it is due entirely to the loyalty of the small stockholders and policyholders who readily re-
235 sponded to the cry for help, from those who were near enough to the base of operations to understand what was going on, that made it possible for this institution to be in existence at this hour.

I should like very much indeed to talk with you in person because I can see from the tone of your letter that you do not understand the situation.

Hoping that I may be able to enlighten you to some extent, I am,

Yours truly,

——— ———,

Secretary & Treasurer."

Mr. Neel: Now, Mr. Landon, I have here a bunch of stipulations signed by various parties still represented in these counts that are not dismissed here, that signed that amendment that anything to be paid under the annuity certificates should be paid out of the earnings over that. You might look them over and if there is any objection, all right, and if not, we can save time by putting them in.

Mr. Landon: Put them in.

Mr. Neel: I offer in evidence amendments signed by Mr. George Kump, who held annuity certificate No. 381, being exhibit 29, and these other amendments, signed by other parties, being Exhibits 30 to 42, inclusive.

Said documents, so offered and introduced in evidence, marked Exhibits 29 to 42, inclusive, are, respectively, in words and figures as follows:

EXHIBIT 29.

Amendment.

Annuity Certificate No. 381 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D., 1907.

GEO. KUMPF,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

236 EXHIBIT 30.

Amendment.

Annuity Certificate No. 2420 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D. 1907.

LENA V. KUMPF,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 31.

Amendment.

Annuity Certificate No. 2424 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual

consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D. 1907.

HELEN E. J. KUMPF,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 32.

Amendment.

Annuity Certificate No. 284 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

237 No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D. 1907.

JAMES BALL,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 33.

Amendment.

Annuity Certificate No. 286 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D. 1907.

F. B. BONEBRAKE,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 34.

Amendment.

Annuity Certificate No. 417 and 641 issued by the Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, *is* hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D. 1907.

N. N. CAMERON,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

238 EXHIBIT 35.

Amendment.

Annuity Certificate No. 506 issued by the Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D. 1907.

E. G. VAN NESS,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 36.

Amendment.

Annuity Certificate No. 238 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D., 1907.

THEODORE P. WALTON,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 37.

Amendment.

Annuity Certificate No. 213 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

239 No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D., 1907.

CORA J. WELLS,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 38.

Amendment.

Annuity Certificate No. 410, issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D., 1907.

ROBERT CRAIG,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 39.

Amendment.

Annuity Certificate No. 195 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D., 1907.

S. W. NASSAMAN,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.
THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

240 EXHIBIT 40.

Amendment.

Annuity Certificate No. 609 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and

held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D., 1907.

A. F. SCHAUB,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.

THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 41.

Amendment.

Annuity Certificate No. 194 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby agrees to apportion and pay to the owner hereof."

No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D., 1907.

G. ELLIOTT,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.

THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

EXHIBIT 42.

Amendment.

Annuity Certificate No. 485 issued by The Great Western Life Insurance Company of Kansas City, Missouri, to and now owned and held by the undersigned, is hereby amended by mutual consent as follows: The words "Out of the earnings of the Company" are added thereto (and made a part thereof) immediately after the words "Now Therefore, In Consideration of the premises, the Company hereby

agrees to apportion and pay to the owner hereof."

241 No other provision of said Certificate shall be modified or affected hereby.

Dated this thirtieth day of November, A. D. 1907.

C. H. LEE,
Owner and Holder of said Certificate.

Accepted and amendment made as above provided.

THE GREAT WESTERN LIFE INSURANCE CO.,
By O. L. VAN LANINGHAM,
President.

Cross-examination.

By Mr. Landon

Q. When did you say you became connected with the Great Western Life Insurance Company?
A. In May, 1907.
Q. And then you continued with the company through this receivership, did you?
A. Yes, sir.
Q. And after Judge McPherson's order then you continued working for the Great Western Life Insurance Company?
A. Until November, I think it was, 1908, yes, sir.
Q. It was still the Great Western Life Insurance Company you were working for after it got out of the hands of the receiver?
A. Yes, sir.
Q. That is all.

Mr. Neel: Is there any dispute that the amount paid into the reorganization of new money was one hundred and thirty thousand dollars, paid by stockholders?
Mr. Landon: You have the evidence from Mr. Chappell, I don't know anything about it.

Redirect examination.

By Mr. Neel:

Q. Did you have charge of the keeping of these books?
A. Yes, sir.
Q. Now, just take that book, will you please. Now, what is this book I hand you?
A. This is a combined journal, cash book and voucher check register.
Q. Of what company?
A. Great Western Life Insurance Company.
Q. What date does the book at the page before you cover?
A. September 1st and part of September 2nd, 1908.
Q. Is there an entry on that page of that book that shows the total amount paid in by the annuity certificate holders and stock-

holders in the reorganization of this company that was in receiver ship in the Federal Court that you have been talking about here

A. There is an entry here showing the receipt of one hundre and thirty thousand dollars from W. T. Kemper, trustee of th reorganization fund.

Q. Do you know what that was? Anything more? Can yo amplify that from your own knowledge?

A. In a general way I can, yes, sir.

Q. What was that fund turned over to Mr. Kemper, trustee?

A. The holders of Great Western Agency Company stock
242 and the holders of these so-called annuity or investmen certificates, were given the privilege of contributing to th reorganization fund, and for their contributions to receive stock i the reorganized company in accordance with the decree of th Federal Court. I don't recall just what the ratio of contributions o ratio of stock issued were, but I do know that contributions com in from time to time, turned over to Mr. Chappell, the chairman o this reorganization committee, and handled by him I believe through the Commerce Trust Company. These contributions were in some cases cash and some cases notes, but they were not entered in detail on the company's books, because the company was in the hands o the receiver and could not receive transactions of that kind. The company, as a company and as its records are concerned, received money only from the reorganization committee.

Q. Was Mr. Kemper made treasurer of this reorganization fund?

A. I believe he was designated as trustee.

Q. Then did he turn that money over to the company after that money was collected?

A. Yes, sir.

Q. And that is that one hundred and thirty thousand dollars there?

A. Yes, sir.

By Mr. Sherman:

Q. What is the date of that?

A. That entry is made under date of September 1st.

Q. 1908?

A. 1908, yes, sir.

By Mr. Neel:

Q. Do you know what proportion of stock in the reorganized company these annuity certificate holders got for the certificates they had turned in on the reorganization?

A. No, sir, I don't recall.

Q. Were they issued stock in the reorganized company?

A. Yes, sir.

Q. In proportion to the amount of certificates that they had?

A. Yes, sir.

Mr. Landon: I object to that as a conclusion of the witness.

By Mr. Sherman:

Q. Do you mean, Mr. McBride, that they issued stock to the annuity certificate holders who did not put up any cash?
A. No, sir.

By Mr. Neel:

Q. I didn't ask that. I asked if the annuity certificate holders who contributed to the funds were thereafter issued stock in the reorganized company?
A. Yes, sir.
Q. In proportion to the amount of certificates that they held?
A. Yes, sir.

Recross-examination.

By Mr. Landon:

Q. What was the capital stock of the Great Western Life Insurance Company?
A. One hundred thousand dollars, par value.
Q. And it remained such after this receivership, didn't it?
A. Yes, sir.
Q. These books you have are the books of the Great Western Insurance Company?
A. Great Western Life Insurance Company.
Q. I mean Great Western Life Insurance Company?
A. Yes, sir.
Q. And they contain the items with reference to the business of the company prior to the receivership, don't they?
A. Well, I don't know whether this book goes that far back or not.
Q. But you used the same books, didn't you? Continued the items in the same books after the receiver was discharged as you had previously?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. That is all.

Witness excused.

GEORGE STEVENSON, called as a witness on the part of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Neel:

Q. Tell the court your name, please.
A. George Stevenson.
Q. What is your age?
A. Fifty-eight.

Q. Where do you live?
A. 3237 Michigan Avenue, Kansas City.
Q. What is your business?
A. Grain merchant.
Q. How long have you lived in Kansas City?
A. About 10 years.
Q. Were you an annuity certificate holder of the Great Western Life Insurance Company prior to 1908?
A. Yes, sir.
Q. Did you hold any office with the Great Western Life Insurance Company or not?
A. In 1908?
Q. Prior to the receivership.
A. No, sir.
Q. Were you a stockholder in the agency company?
A. Yes, sir.
Q. And an annuity certificate holder in the insurance company?
A. Yes, sir.
Q. You did not have any other connection, prior to the receivership, with the company?
A. I was a policy holder, yes, sir.
Q. Also a policy holder of the life insurance company—you had a policy in the insurance company?
A. Yes, sir.
Q. Now, when did you first hear of the receivership proceedings that was brought by Mr. Atwood, as attorney, against the Great Western Life Insurance Company?

Mr. Landon: I object to that as immaterial.
The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Q. When did you first hear of this receivership suit brought by Mr. Atwood, representing the parties he did represent in that suit—the Wagstaff suit?
A. I think I read of it in the Kansas City paper—Kansas City Star.
244 Q. Did you interest yourself then in protecting your interest in that company in any way?
A. Yes, sir.
Q. Were there any meetings of stockholders and annuity certificate holders?
A. Yes, sir.
Q. Where were the meetings?
A. The first meeting was held at Topeka.
Q. Did you attend that meeting?
A. I did.
Q. Were there both annuity certificate holders and stockholders there?
A. Yes, sir.

Q. You could not tell the names, I understand, of everybody at that meeting?

A. Well, I could not. There was quite a large attendance.

Q. Do you know whether there was a considerable per cent of these parties who held stock and annuity certificates—that held both like you did?

A. Well, quite a number, yes, sir.

Q. As to the proportion, as to that you could not tell?

A. No, sir.

Mr. Hill: Objected to as hearsay, unless he knows absolutely what these men held.

The Court: I presume he is testifying from his knowledge.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Q. Now, at the meeting in Topeka, this first meeting, I wish you would tell briefly to the court what was the purpose of the meeting and the doings of the meeting and the action of the meeting.

Mr. Hill: I object to that as not binding on the parties to this suit: not proving or tending to prove any issue made by the pleadings.

Mr. Neel: I just want to show the general purpose of the meeting, that it was looking to the reorganization of the company and the protection of the stockholders.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. It was for the purpose of getting the stockholders and policy holders to participate in the reorganization of the company.

Q. Did it have anything to do with the annuity certificate holders?

A. The same, yes, sir.

Q. How large a room was that meeting held in?

A. Well, I should judge it was about the size of this.

Q. This room is about fifty by fifty feet, isn't it? What would you estimate the size of this room?

A. This was a sort of double parlor on the second floor of the Copeland Hotel.

Q. Give us an idea of the size of it.

A. I think the room was as large as from those posts.

Q. Nobody knows how large the posts are?

A. About how large in dimension?

Q. Yes, sir.

A. I would say probably forty by perhaps sixty feet of space.

245 Q. Was it well filled with chairs?

A. Yes, sir.

Q. And were the chairs well filled with people?

A. Quite well filled.

Q. Made the room pretty well full?

A. It was a very good sized crowd I would think.

Q. About when was that first meeting, Mr. Stevenson?

A. I think that was in July.
Q. 1908?
A. Yes, sir.
Q. That was shortly after this Wagstaff suit was filed?
A. Yes, sir.
Q. What action was taken, if any, at that meeting with reference to the election of one member of the meeting to represent the balance? Anything?

Mr. Hill: Objected to as immaterial, not tending to prove or disprove any issue in this case, and not binding on the parties to this action.
The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. There was a committee appointed to solicit—to apprise the stockholders and annuity holders of the meeting to be called later.
Q. Who was chairman of that committee?
A. James Chappell, as I remember.
Q. Do you remember the balance of the committee?
A. I think Mr. Pearl of Hiawatha, Kansas, and a gentleman from Holton, Kansas, another.
Q. Where was the next meeting?
A. The next meeting was at Kansas City, but I didn't attend that.
Q. Pass to the next meeting you attended.
A. I didn't attend any meetings here.
Q. Did you attend any meetings any where else?
A. No, sir.
Q. Were you present at the Federal Court when Judge McPherson delivered his opinion or remarks?
A. Yes, sir.
Q. Was that pretty generally attended?

Mr. Hill: Objected to as immaterial.
The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. Yes, sir, it was pretty generally attended.
Q. Were the newspapers, the Star and Times and Post and Journal reporting what occurred in the lawsuit in the Federal Court?
A. Well, I could not say, but of course, I read accounts in the papers. I suppose it was.
Q. That is what I asked.
A. I was a stranger here in the city at the time.
Q. Did you read anything in the newspapers here about this suit in the Federal Court and what was being done?
A. Yes, sir.
246 Q. That was very largely reported?

Mr. Hill: Objected to as incompetent and immaterial, and ask that the answer be stricken out.

Mr. Neel: I see I have the papers here, I will withdraw the question.

Q. After the re-organization of the company you were elected president of the company, weren't you?

A. Yes, sir.

Q. How long did you continue as president?

A. From about the first of September, 1908 until December, 1912.

Q. Was that when the Great Western Life Insurance Company consolidated, or whatever it did, with the International Life Insurance Company, the defendant in this case?

A. Yes, sir.

Q. During the entire period you were president of the company do you have any recollection of hearing any complaints on the part of any of the annuity certificate holders who didn't come into the re-organization, with reference to their demands against the Great Western Life Insurance Company at that time?

Mr. Hill: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. Well, sometimes we would receive a letter that was complaining, of course, as to the former management of the company, and so forth.

Q. I understand, but what I meant was, did you receive any demand you can recollect, other than this letter of Mr. Sherman in 1913—I believe that was after you went out, through—demanding that they be paid back their money?

A. No, sir.

Q. Or demanding that anything be done for them with reference to the annuity certificates that they had?

A. No, sir.

Q. The Company's office after the re-organization was here in Kansas City, Missouri, wasn't it?

A. Yes, sir.

Q. It continued to be here until the company was taken over, or whatever it was, by the International?

A. Yes, sir.

Q. Then the offices were moved to St. Louis, were they not?

A. Yes, sir.

Q. I want to ask you about what per cent, would you say, of the annuity certificate holders come into this re-organization and accepted stock in the re-organized company and surrendered their certificates.

Mr. Landon: Objected to as wholly immaterial and not binding on the plaintiff in this case.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. To the best of my recollection I would say about sixty or sixty-five per cent.

Q. You were president of this company and you know
247 whether or not there was any appeal taken from the final decree in the case in the Federal Court?

Mr. Landon: I object to that as calling for a conclusion and asking for a legal opinion.

Mr. Neel: Won't you admit there wasn't any appeal taken?

Mr. Hill: I guess so.

Mr. Landon: We are not parties to it.

Mr. Neel: You know there was no appeal in the case?

Q. Do you know whether there was any appeal in the Wagstaff case? Whether it ever went to the Appellate Court?

Mr. Landon: I object to that as not the best evidence.

The Court: Haven't you the records of that court?

Mr. Neel: This transcript don't say whether or not there was an appeal taken. I offer in evidence the final decree in the Wagstaff case, filed in the Federal Court November 29th, 1912.

Said document, so offered and introduced in evidence, is in words and figures as follows:

EXHIBIT "43."

"In the Circuit Court of the United States for the Western District of Missouri.

In Equity.

No. 3367.

J. M. WAGSTAFF et al., Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN LIFE INSURANCE COMPANY, et al., Defendants.

Now on this 14th day of October, 1912, the defendant, The Great Western Life Insurance Company, appearing by James W. Orr, its attorney, represented to the court that heretofore and on the 27th day of August, 1908, before the Honorable Judge McPherson, Judge, decree and orders were entered in the above entitled cause finally disposing of all matters and things involved and then before the court, and in said decree it was provided, viz:

"It is further ordered and decreed that the jurisdiction of this court is fully retained, extended and continued from time to time until this cause is finally concluded over all subjects-matter covered

by any pleading now on file or that later on may be filed, and over all parties whose names are now on the record and such other party or parties as may later on be brought into court or who may come into court by any pleading. And all such parties now to the record and including the Great Western Life Insurance Company, and all parties who may later on be made parties herein, shall be bound by such further orders and decrees as to the court may seem necessary or proper. All of which are ordered of record this August 27th, 1908.

And it being made to appear to the satisfaction of the court that this cause is finally concluded over all subjects-matter covered by any pleading then or since filed in said cause and that all parties then or thereafter being brought to said court in said cause have been heard, and the matters disposed of and that it is no longer necessary or important to continue or retain jurisdiction of said cause.

248 It is by the court Ordered and Decreed that further jurisdiction of this court over said cause or any of the matters relating thereto or involved therein be and the same is hereby withdrawn and discontinued, and this court hereby relinquishes further jurisdiction of this cause or of the subject matter thereof.

(Signed) SMITH McPHERSON,
Judge."

Endorsed on the back thereof is the following

"In Equity. No. 3367. J. M. Wagstaff et al. vs. The Great Western Agency Company, The Great Western Life Insurance Company et al. Decree. James W. Orr, Lawyer, Atchison, Kansas. Filed November 29, 1912. John B. Warner, Clerk, by Inez Adams, Deputy Clerk."

Cross-examination.

By Mr. Hill:

Q. The meeting you spoke of having been called at Topeka, the members that composed that were stockholders of the Agency Company and holders of annuity certificates, is that right?

A. Yes, sir.

Q. There were not any persons there who held stock in the Life Insurance Company?

A. I didn't understand it that way, no, sir.

Q. As you understand, it was a meeting of persons interested in the Agency Company and in the annuity certificates?

A. Yes, sir.

Q. The capitalization of the Insurance Company was one hundred thousand dollars?

A. Yes, sir.

Q. And the capital of the Agency Company was how much?

A. Well, I don't know.

Q. Wasn't it two million dollars?

A. It might have been.

Q. Two million dollars?

A. Might have been, I don't know.

Q. Now, do you know how many certificate holders about that time there were all told in the company who held annuity certificates?

A. Well, I did know, but I can't recall just now.

Q. Don't you know, as a matter of fact, that these annuity certificate holders had paid into the company, and received these certificates therefor, about three hundred thousand dollars?

A. Well, I didn't know, only just from what was supposed to be that amount—about that, yes, sir.

Q. About that amount?

A. I think so.

Q. That is what you understood about the amount?

A. That is about my recollection of it.

Q. Now, how much had been paid for agency stock?

A. Well, I could not say.

Q. Wasn't that about five hundred thousand dollars?

A. Well, I rather think it is about that sum, as I recall.

Q. Then if you paid in five hundred thousand dollars that left you about eighty thousand dollars with which to organize the
249 Great Western Life Insurance Company?

A. Well, I wasn't one of the organizers of the Life Insurance Company—that is, the original—so that I could not say how much they had.

Q. Now, these two bids up in the Federal Court, or three bids, that have been introduced in evidence, now before those bids were accepted isn't this what happened: Certain people who were interested in the welfare of the company got up this proposal to raise one hundred and thirty thousand dollars and take it out of the hands of the receiver and restore it to its former place and go on with the business. Now, isn't that just about what happened?

A. I don't quite get the drift of your question.

Q. Well, may be I haven't made it plain. Isn't this what happened in the Federal Court in a general way, as you understood it: There were bids there from three insurance companies for this property, that is, for the assets covered by this receivership?

A. Yes, sir.

Q. Now, pending that and before these were accepted by the court, didn't several of the prominent members, financially interested in the welfare of the company and heavy holders of these certificates, and others, all get together and raise this one hundred and thirty thousand dollars, and when that was raised the business was turned over and the receiver was discharged?

A. No, sir, at the first meeting before the Federal Court they made a showing of having raised several thousand dollars through the annuity certificate holders and agency stockholders subscribing for what would be the amount of their holdings. Well, the showing was sufficient that the court granted further time, and that was when

they came in and made the showing that the court issued the order that they might re-organize.

Q. And upon the payment of this money which they raised, it was turned back to the officers of the company and went on doing business?

A. Yes, sir.

Q. And you were the president after that?

A. After that, yes.

Q. And you were president when it sold out to the International Life Insurance Company?

A. Yes, sir.

Q. And you were a very heavy stockholder at that time, wasn't you?

A. Well, I was one of them.

Q. Now isn't it a fact if the International Life Insurance Company has to pay in this suit that you have to pay back to them part of the purchase price they paid you?

A. No, sir.

Q. That is not part of your agreement?

A. No, sir.

Q. About how much, in gross, in business did the Insurance Company have at the time it went into the hands of the receiver?

A. You mean about how much was on the books of the company?

Q. Yes, sir.

A. At the time they went into the hands of the receiver?

Q. Yes.

A. That I don't know, because I did not have any access to the books, but they had written a very large amount of insurance during the first year.

250 Q. Wasn't it about twenty-four million dollars?

A. I think it was something upward of twenty million dollars that they had written the first year, or less than the first year, of their existence.

Q. And as an insurance man you know, of course, that the assets of an insurance company is the business it writes?

A. Well, if they continue to pay their premiums that is what makes the assets of the company, yes, sir. Helps very largely, together with the interest.

Q. And the value of the stock of the company, of course, is according to how much business they do, the volume of business?

A. Well, I presume so. That would determine somewhat.

Q. Now, after the re-organization, or after it was turned back to the officers of the company and went on doing business, the company kept writing business?

A. Yes, sir.

Q. Had its agents solicit business just as it did before?

A. Yes, sir.

Q. In the name of the Great Western Life Insurance Company?

A. Yes, sir.

Q. And continued that way up to the time it consolidated with the International?

A. Yes, sir.

Q. Do you know how much the Kansas City Life Insurance Company bid, and these other companies?

A. No, sir, I don't remember.

Q. To refresh your recollection, didn't they bid three hundred thousand dollars?

A. Well, I could not say. I don't remember.

Q. This one hundred and thirty thousand dollars raised and put in there, wasn't that to use to purchase the assets of the Life Insurance Company?

A. As I understand it, the court made a ruling that the trustee of the re-organization fund,—that is, there was a price agreed on of eleven thousand dollars—an upset price, and he was to pay that. That is as near as I can remember it.

Q. That is all.

Redirect examination.

By Mr. Cooper:

Q. You say the company wrote upwards of twenty million dollars the first year of its existence?

A. Yes, sir.

Q. How much insurance was in force at the time of the merger with the International Life Insurance Company?

A. At the time of the International merger? About fifteen million dollars, if I remember right.

Q. What was the experience of the Great Western Life Insurance Company during the stormy period of reorganization, with reference to whether there were lapses?

A. Why, at the time we took hold of the company it had lapsed off a hundred thousand dollars, almost, per day. So that when we finally got going it was the larger proportion of the insurance they had previously written was lapsed.

Q. The word had gone out to the stockholders that the company had been adjudged insolvent by the Federal Court?

251 Mr. Hill: Objected to as immaterial.
The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. Well, I would gather it that way from the lapses that occurred.

The Court: I didn't understand what particular class of parties in interest raised this $130,000.00.

Mr. Sherman: The agency company stockholders and the annuity certificate holders. The two classes together.

The Court: Annuity certificate holders.

Mr. Sherman: Some of them, and the others were Great Western Agency stockholders.

The Court: Do you know what the pro rata share of the annuity certificate holders would have been if they had all gone into this re-organization scheme?

A. Perhaps I can make that a little clearer by stating it in this manner: The plan of reorganization was to assess twenty-five per cent of each annuity certificate holder for this reorganization fund, which was about $37.50 per each certificate. Each Agency stockholder was assessed twenty-five per cent of the value of his stock, which was sixteen dollars per share. Therefore, they would be obliged to pay in four dollars per share, then they would receive stock in the Great Western Life Insurance Company after reorganized, at the rate of two hundred dollars per share.

By the Court:

Q. How did you arrive at this assessment? On what basis?
A. Well, it would require about that amount to pay the debts and then when all the stock was sold, to repair the impairment of the capital and leave a surplus.
Q. But why the difference in assessments?
A. As to the annuity certificate holder, each annuity certificate or investment certificate was one hundred and fifty dollars. That was the cost to the purchaser of that certificate, and they were assessed twenty-five per cent of that. The cost of the Agency stock was sixteen dollars per share, and they were assessed twenty-five per cent, which was four dollars per share.

By Mr. Neel:

Q. The same per cent to both?
A. Yes, sir; the same per cent to both.

Mr. Sherman: You see, the Agency Company stockholders simply owned the stock of the Great Western Life Insurance Company.
The Court: Yes, I understand, but what was the value of a share of stock in the Life Insurance Company?
The Witness: Well, I don't know.
Mr. Cooper: You mean the par value?
The Court: Yes.
The Witness: Oh, one hundred dollars.

By the Court:

Q. The value per share of the annuity certificates was one hundred and fifty dollars?
A. That is what they sold them at.
Q. How much did you sell the stock in the company for?
A. Well, under the plan of reorganization——
Q. (Interrupting.) No, I want to get at the original cost of this stock.
A. Well, I don't know.

The Court: I want to get at whether this assessment was equitab made.

Mr. Sherman: You mean of the stock in the Life Insurance Co pany?

Mr. Neel: You asked about the Life Insurance Company, y meant Agency, I think.

The Court: The Agency Company held the stock in the Life I surance Company. I want to know about the proportionate val of these shares.

Mr. Neel: Maybe I can help you this way: The assessment w made exactly in the same proportion on the annuity certificates on the stock of the Agency Company. The annuity certificates h been paid for at the rate of one hundred and fifty dollars and t other less.

By the Court:

Q. Is that the way you understand it?

A. Yes, sir.

Q. Then the assessments were proportionately the same?

A. Yes, sir.

Q. Without this assessment, what was stock in the Life Insuran Company worth?

A. Well, I don't know.

Q. Without the assessments what were the annuity certificate worth?

A. Well, at the time that this assessment was made they didn appear to have any value.

Q. Did the stock have any value?

A. No, sir—the Agency stock.

Q. Whatever value either of these certificates subsequently a quired was by reason of this assessment?

A. And reorganization of the company, going.

Mr. Sherman: Just a minute. I think one or two questions wi clear that up.

By Mr. Sherman:

Q. You say one hundred and thirty thousand dollars cleared u all the indebtedness and left some surplus?

A. I think it did, yes, sir.

Q. That was not including any of the annuity certificate holder was it?

Mr. Hill: Beg pardon?

Q. You paid all the indebtedness due anybody, except the annuit certificate holders, with this one hundred and thirty thousand do lars?

A. Well, the decree of the court didn't take into consideration tha the reorganized company—that there was anything due anyone.

Q. At any rate, one hundred and thirty thousand dollars pai all debts?

A. Yes, sir.

Q. The Trans-Mississippi Life Insurance Company made
253 an offer of $284,898.27, didn't it, for the assets?

A. I don't remember.

Q. If that was true, there would be a surplus of one hundred and fifty thousand dollars or over left to take care of other indebtedness?

Mr. Cooper: That is the gross bid, and the first thing they do after that is to deduct one hundred and forty-nine thousand dollars. The net is somewhere about one hundred and twenty-five thousand dollars of all the bids. I mean you have to analyze them. It took a man nine hours to figure out those bids. That says, we will give so much, and want to deduct the reserve and deduct this and that.

The Court: I want to know whether the value of the annuity certificates was increased by reason of the assessments, and if so, how much?

Mr. Sherman: They were wiped out.

Mr. Neel: They were wiped out and stock in their place.

The Court: Those who didn't come in didn't get stock in their place. I would like to have it in the record in the way of evidence.

By Mr. Neel:

Q. Now, Mr. Stevenson, this reorganization plan, as I understand you, was that after the reorganization those annuity certificate holders who come in should be issued, on surrender of their old annuity certificates, stock in the reorganized company?

A. Yes, sir.

Q. And that was on a percentage basis, according to what they had turned in?

A. The certificates they had turned in, yes, sir.

Q. And also, in comparison with the stockholders of the Agency Company, was proportionate to the original cost of the stock in the Agency Company on one hand, and the annuity certificates on the other?

A. Yes, sir.

Q. Now, had there been no reorganization, upon your information of this company, and of the books and assets and the circumstances surrounding it, would there have been any value to those annuity certificates whatever?

Mr. Landon: That is drawing a conclusion.

The Court: In your opinion.

A. There would have been none; nor the Agency stock, either.

Q. That is what I was going to ask you next. Now, in your opinion, after the reorganization, did the stock which the annuity certificate holders got on surrender of their annuity certificates, have any value?

A. Yes, sir.

Q. What was its par value—this new stock that was issued?

A. Well, I think it was one hundred dollars.

Q. Now, what would you say was the actual value of that reorganized stock, on the one hundred dollars par valuation, in
254 the reorganized company?

A. Well, I could hardly say at the inception what it would have been.

Q. Well, what is your opinion of it?

A. Somewhere around one hundred and seventy-five to two hundred dollars?

Q. That is, it was worth more than par?

A. Yes, sir.

Q. And people got twice as much stock in the reorganized company as they paid par for?

Mr. Landon: I object to that as calling for his opinion.

Q. I got that just wrong. They paid in two for one, as I understand?

A. Yes, sir.

Q. That is, where they paid in two hundred dollars they got one hundred dollars of par value of the reorganized company's stock?

A. Yes, sir.

Q. And in your opinion, as I understand, that stock was then worth about one hundred and seventy to one hundred and seventy-five dollars?

A. Well, around that figure. I think the insurance commissioner figured it somewhere about one hundred and seventy dollars.

Q. Now, Mr. Stevenson, if these annuity certificate holders who didn't come into the reorganization, could have their certificates recognized as a valid claim against the company, would they have been of more value after the reorganization than they would have been if the reorganization hadn't taken place?

A. I think so.

Q. That follows as a conclusion, really, from what you have already said.

Mr. Sherman: We object to that.

Q. Now, one other question. In your opinion and calculation if all of these annuity certificate holders had come in and deposited their certificates, put in their money as per the order of court, would it have increased the surplus of the reorganized company by that much?

Mr. Landon: Objected to as immaterial and incompetent.

The Court: I guess the court can answer that.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

Q. That is all.

Recross-examination.

By Mr. Landon:

Q. How much insurance outstanding was there when you sold out to the International Life Insurance Company?
A. I think about fifteen million dollars?
Q. And you got five hundred and fifteen thousand dollars for this didn't you?
A. Something in the neighborhood of that, but there was other things that would militate from that.

By Mr. Neel:

Q. Do you know whether or not this Fair Play circular and the circulars prior to that time and afterwards the decree of Judge McPherson that was printed, were mailed out to the annuity certificate holders and stockholders of the Agency Company? I ask you if you know whether or not they were, of your own knowledge.
255 A. I know that the order and decree was mailed out and at different times some letters were mailed out under the direction of the secretary, Mr. Chappell.
Q. Who were they mailed to?
A. To the stockholders and annuity certificate holders and policy holders.
Q. Were they postage prepaid and put in the mail box?
A. Yes, sir.

By Mr. Sherman:

Q. How much were the annuity certificate holders to pay into this reorganization scheme, per certificate?
A. Thirty-seven dollars and a half.
Q. And what were they to get for that?
A. They were to get one-half that amount in stock of the reorganized company.
Q. And were given no credit whatever?
The Court: One-half of what amount?
A. That is where I think they figured it would be at the rate of the par value of the stock.

By the Court:

Q. One-half of thirty-seven dollars and fifty cents, or one-half of one hundred dollars and thirty-seven dollars and fifty cents?
A. One-half of the thirty-seven dollars and a half.

By Mr. Sherman:

Q. They were given no credit for the value, if there was any, for the annuity certificate?
A. No, sir.

Q. Those were absolutely wiped out?
A. Yes, sir.
Q. It was simply a privilege to pay two hundred dollars for one hundred dollars of stock?
A. Yes, sir.

The Court: I don't understand that.
Mr. Cooper: Don't Your Honor understand, in the reorganized company whoever bought stock, whether he was an Agency man or an annuity certificate man, paid two to one for it?
The Court: I understand that. But these annuity certificate holders who paid the $37.50 would get how much stock?
Mr. Lyons: Whatever the money would.
The Court: Just half of the $37.50?
Mr. Lyons: Yes, sir.
The Court: If he wanted one hundred dollars of stock he would have to put in two hundred dollars?
Mr. Lyons: Yes, sir.

By Mr. Sherman:

Q. After the reorganization do you remember what the surplus was, immediately after that scheme was put through?
A. No, sir; I don't. It wasn't very large, but it was a few thousand dollars, if I remember right.
Q. The capital was originally one hundred thousand dollars?
A. Yes, sir.
Q. It had simply been restored and you had created a certain surplus?
A. Yes, sir.
Q. And had paid one hundred and thirty thousand dollars of debts, including twenty-one thousand dollars indebtedness of the Great Western Agency Company?
256 A. Well, I don't know whether that was a debt of the Great Western Agency Company or of the Life Insurance Company was it?
Q. Well, the indebtedness, so stated by Mr. Cooper, was the indebtedness of the Agency Company, but certain shares of the stock of the Life Insurance Company had been deposited as security for said indebtedness, and Mr. Cooper said this twenty-one thousand dollars was money borrowed by the Great Western Agency Company to make up the balance of the one hundred thousand dollars of the capital stock of the Great Western Life Insurance Company, and that it must have been the indebtedness of the Great Western Agency Company or some of the officers.
A. All that was prior to my having anything to do with the company, you understand, and I don't know just how that was arranged.
Q. But under the decree made, then as a matter of fact eleven thousand dollars was paid for this nine hundred and ninety-two shares of stock of the Great Western Life Insurance Company, plus the payment of the twenty-one thousand dollars indebtedness to the Bank of Commerce?

A. And some ninety thousand dollars for premiums which had been advanced, if I remember right, too.

Q. But this other was indebtedness of the Great Western Agency Company?

A. Oh, I don't know whether it was the Agency Company's or the former Life Insurance Company—the first life company, they were so intermingled.

Q. I think the decree shows that, anyhow.

By the Court:

Q. I don't know whether I have this clear in my mind or not. It does not impress me as being entirely clear in the record. Do I understand you say for the privilege of surrendering the annuity certificate and for permission to pay in $37.50 these holders were to receive $18.75?

A. $18.75.

Q. That is the only consideration to them for this stock which you proposed to issue to them, the privilege of cancelling their annuity certificate and of paying in $37.50?

A. Yes, sir. In other words, they paid a premium on their loss to secure stock in the Great Western Life Insurance Company.

Q. In other words, they paid a heavy premium to get back in after they had been kicked out?

A. Yes, sir.

By Mr. Sherman:

Q. And they were let in on the same basis that the stockholders of the Great Western Agency Company were let in?

A. Yes, sir; just the same. There was no difference.

Mr. Neel: I have here the files of the Kansas City Star, Post and Times. That is all the evidence I have. I want to put in these articles that appeared in the papers generally, and I assume the court will take judicial knowledge of the circulation of the papers?

The Court: This witness can testify to the circulation.

By Mr. Neel:

Q. Did you use to live in Kansas?

A. Yes, sir.

Q. Whereabouts?

A. Waterville, Kansas.

Q. Does the Kansas City Star circulate pretty generally over Kansas?

A. Yes, sir.

257 Q. And the Morning Times?

A. Yes, sir.

Q. And does the Post also circulate in Kansas to some extent?

A. Some, not as generally as the Star.

Q. The Star is the most universally read paper, and its morning twinkler, the Times, in the state, isn't it?

A. Yes, sir.
Q. That is true also in the western half of Missouri?
A. Why, I understand so.
Q. And it is true in Oklahoma, isn't it?
A. I am not well posted on that.

The Court: I suppose it will be admitted they are papers of general circulation.

Mr. Landon: Yes, it will be admitted, but I don't see how it is competent.

Mr. Neel: I want to offer in evidence an article which appeared as a news item in the Kansas City Post of July 25th, 1908, page 2, entitled, "Stop Sale of Assets; Van Landingham seeks to protect stock of Great Western Life; Affairs complicated." And also an article which appeared in the same paper Monday, July 27th, 1908, on the front page, entitled, "Open Bids for Great Western Assets Tuesday."

Also an article in the Post, on the front page thereof, of July 28th, 1908, entitled, "Are the Three Thousand Policyholders of the Great Western Life Being Robbed? O. L. Van Landingham makes sensational charges against Superintendent of Insurance and Col. Fleming of the Kansas City Life."

And also an article appearing in the Post on July 29th, 1908, entitled, "Charges Bid of Kansas City Life was not the Highest; Van Landingham says he has information that Philadelphia offered the largest sum; will fight confirmation of sale of assets to Kansas City." And the reference in those articles to this reorganization.

Mr. Landon: Objected to as wholly incompetent and immaterial and in no way binding on any of the parties hereto.

Mr. Neel: I want to also offer in evidence the article appearing on the first page of the Kansas City Star dated July 28th, 1908, entitled "Twice Stops Great Western Sale."

Also the article on the first page of the Kansas City Times dated July 29th, 1908, entitled "To Capitalize Debts; Accountant of Court tells how Van Landingham promoted Great Western Agency Company."

Also an article on the front page of the Kansas City Star, dated July 29th, 1908, entitled "Is Life Assets Bid Higher?"

Also the article on the front page of the Kansas City Times of Thursday, July 30th, 1908, entitled "Stand Pat on Life Bids."

Also the article on the front page of the Kansas City Times of July 31, 1908, entitled "To Contest the Life Sale."

Mr. Landon: Those papers are objected to for the reasons heretofore given. No showing that any of the parties at issue in this case had any knowledge or information with reference to these newspaper items, and for the further reason they would be incompetent on any issue in this case.

258 The Court: Objection sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

Said articles in said newspapers, so offered and refused by the court, are, respectively, in words and figures as follows:

(*K. C. Post, Second Page, July 25th,* 1908.)

"Stop Sale of Assets.

Vandiver Seeks to Protect Policy Holders of the Great Western Life.

Affair is Complicated.

International Insurance Company of St. Louis Sees Chance to Rake Down "Velvet."

The action of the Superintendent of Insurance Vandiver and Assistant Attorney General John Kennish in attempting to stop the sale of the assets of the Great Western Life Insurance Company under order of the Federal Court complicates one of the biggest financial battles which has ever been waged in Missouri. The stakes of the battle are the policies written by the Great Western Life Insurance Company and the something over $200,000 worth of securities deposited by that company with the State Insurance Department.

It would be possible by a little manipulation for the successful bidder for these assets to "rake down" the greater part of the securities at Jefferson City as "Velvet" and there is a suspicion abroad that the real object of Mr. Vandiver and Mr. Kennish is to save these securities for the policy holders in whose interest the state holds them.

The bids for the business of the Great Western were to be opened by the Federal Court on Tuesday next. Aside from the profit which might be made on the securities, there would be a big profit also in the business of the company. The stake for which the contestants in the struggle are fighting is perhaps worth millions.

The first organized efforts to get hold of the assets of the company was made when the Trans-Mississippi Life Insurance Company of Kansas City was organized by Judge E. L. Scarritt, Elliott H. Jones, William S. Woods, Walton Holmes, Jr., and others, with a directorate which was made up of clerks and fledgling lawyers who had no real interest in the company, but whose names were needed to fill out the directorate. The promotors of this company first denied and afterwards admitted that they were after the assets of the Great Western. They also denied that the company is a Pioneer Trust Company concern, although its directorate contains the names of a number of men who are either stockholders or employes of the Pioneer Trust Company. C. S. Jobes, Receiver of the Great Western Agency Company, which owns the majority of stock in the Great Western Life Insurance Company, is Vice-President of the Pioneer Trust Company. The organizers of this company saw a good thing in the Great Western assets, and hoped that by the time O. L. Van Laningham, the organizer of the Great Western, and Judge Scarritt, the organizer of the Trans-Mississippi, got through fighting, the International would have a chance at the stakes. It is understood that the International intends to bid. The

directorate of the International is as follows: Richard Bartholdt, Thomas K. Neidrigghaus and J. C. McCauley, St. Louis; Harry M. Rubey, Macon; Walter S. Dickey, Kansas City; J. L. Babler, St. Louis; A. C. Landon, Clinton; W. H. Allen, Eldorado Springs.

The entry of this company into the field, made the financial skirmishes, which had been going on under cover, all the more fierce. Meanwhile, Superintendent Vandiver had been keeping his eye on the matter in the interest of the policy holders of the Great Western. Mr. Vandiver has apparently come to the conclusion that there isn't any interest of the policy holder to be conserved by the sale of the assets of the Great Western under the plan proposed.

Judge E. L. Scarritt is counsel for the agency company for the insurance company, and for the receiver. He is also counsel and organizer of the Trans-Mississippi Life Company, which is a bidder for the Great Western assets.

The first fight started between the Scarritt concern, the Case directory of the Great Western Company, and the Van Laningham faction which was deposed by the Case directorate. There was a good deal of fierce but quiet fencing between these interests for several weeks. Then there came upon the scene a new company. It was the International Insurance Company, and its directors were from all parts of Missouri.

A suit will be filed Monday in the circuit court by Mr. W. D. Vandiver and Acting Attorney General John Kennish, asking that the affairs of the Great Western Life Insurance Company be taken out of the hands of the Federal Court and out of the hands of the receiver C. S. Jobes, appointed by that court. It will be asked, too, that the new board of directors of the Insurance Company be restricted from accepting bids for the business of the insolvent company.

This suit will be based on the plea that state courts should handle the business of an insurance company organized in this state. It is doubtful whether the Federal Court will surrender authority without appeal. In case of an appeal, the case will hang fire for sixty days at least. By this time, further deaths among those holding policies may bring the affairs into a worse condition than at present. The Attorney General states that his object in trying to get the case transferred is merely to get the case in the proper hands. If it is the business of the state courts, he wants to know it."

260 (*K. C. Post, Front Page, Monday, July 27th*, 1908.)

"Open Bids for Great Western Assets Tuesday.

Bids for the assets of the Great Western Life Insurance Company will be opened tomorrow at noon by Receiver Jobes of the Great Western Agency Company in his office in the quarters of the Pioneer Trust Company in the Dwight Building. The bids will be opened in the presence of W. D. Vandiver, State Superintendent of Insurance.

What bids have been received has not been made public. It is

expected, however, that among other bidders will be the Trans-Mississippi Life, lately organized in Kansas City by persons connected with the Great Western, and the Pioneer Trust Company, and by the International Life of St. Louis, lately organized by a number of Missouri men.

It was also expected in business circles that the Kansas City Life would be a bidder. Colonel Fred W. Fleming of that company said this morning that it did not expect to submit a bid.

Under the order of the Federal Court, bids submitted must be such as meet with the approval of Superintendent Vandiver insofar as they relate to the interests of the policy holders of the Great Western. Mr. Vandiver is emphatic in his declaration that the interests of the policy holders must be protected."

(*K. C. Post, Front Page, July 28th*, 1908.)

Are the 3,000 Policy Holders of the Great Western Life Being Robbed?

O. L. Van Laningham Makes a Sensational Charge Against Superintendent of Insurance Vandiver and Col. F. W. Fleming of the Kansas City Life Insurance Company.

Is an effort being made to rob the stockholders and policy holders of the Great Western Life Insurance Company and Agency Company?

Judge John F. Phillips, of the Federal Court, this morning, for the protection of stockholders in the Great Western Agency Company, which owns the Great Western Life Insurance Company, ordered that bids opened tonight by the receiver Jobes be held fifteen days to allow stockholders to investigate them.

O. L. Van Laningham, former president of the Great Western, in a sensational interview this morning, declared that W. D. Vandiver State Superintendent of Insurance, is a liar, that he is under the influence of Colonel Fred Fleming of the Kansas City Life Insurance Company, and that Superintendent Vandiver has fought the Great Western until he has driven it to the wall.

Van Laningham also charged that there is a conspiracy on to steal the assets of the Great Western Life Insurance Company.

In making this charge, he declared that Superintendent Vandiver is being misled by the conspirators, and named as the parties to the alleged scheme to steal the Great Western assets a number of men whose names are among the best known in Kansas City.

261 "I have been driven to the wall. The stockholders of my companies have been wronged. We can, and would if permitted put the Great Western on its feet again. It is not insolvent," declared Van Laningham. "I am going to stay here and fight these scoundrels who are trying to steal its property until the thing is settled. I propose to bring a number of damage suits; and before I get through, I'll show the public the rottenest mess it has seen for a long time."

Fierce Financial Battle.

The biggest and fiercest financial battle which has been waged in Kansas City in many a long day, is now in progress and has been going on under cover for the past month. It has to do with the assets of the Great Western Life Insurance Company, which are being sold by the Federal Court's receiver in the course of untangling the affairs of the Great Western Agency Company which owns the insurance company of the same name.

Calls Vandiver a Liar.

"W. D. Vandiver is a liar," says former president Van Laningham this morning. "He lies and he knows it." Van Laningham has just finished a final skirmish with the men whom he says are trying to steal the Great Western. His breath came fast and his teeth were clinched. The man who had sold twenty-four million dollars worth of insurance in eight months on the policies of a new company, and who, right or wrong, had fought with the State Insurance Department and half a dozen other life insurance companies for his business, was in a fighting mood.

As he talked, he was alternately excited and calm. But there was always a glitter in his eyes. Van Laningham is a man of nerve. His enemies admit that; and his known courage gave force to the threats which he breathed against those who had been fighting.

"Vandiver is a liar. He has misrepresented the Great Western. He has fought it from start to finish. He is under the influence of Fred W. Fleming of the Kansas City Life Insurance Company who smarted because the Great Western could sell more insurance in a given time many times over than his company did."

"When we were about to organize the Great Western, we called in Mr. Vandiver. Senator A. L. Cooper, Vandiver and myself were in conference. He approved our forms of policies which we submitted to him. He approved the sale of the agency stock to get the securities which we deposited with him. He approved our annuity certificates. He knew all about our plans and agreed to them."

Vandiver Refused to Give License.

"When we went down to Jefferson City with $100,00- in cash certificates to deposit with him, he refused to give us our license. We had complied with the law as to advertising our company and should have had our license in compliance with Vandiver's promise at our conference. Colonel Fred W. Fleming was in Jefferson City when we applied for our license."

262 "Vandiver has stated that we sold $97,000 worth of stock in the insurance company without authority. He lies. When we applied for permission to increase our capital, we asked leave to make it $600,000, an increase of half a million. Vandiver refused to give permission. He said that we would have to advertise

our intention for thirty days. I told him that all the directors and stockholders were present, and that dispensed with the necessity of advertising. We spent two weeks getting him to refer the matter to the attorney general. The attorney General rules for us, but Vandiver still refused. We finally compromised on a lesser issue of stock, and we sold the $97,000 worth under that compromise."

"Vandiver was unfair in his examinations of the Great Western Life. He examined it when it was four months old, which is against the ordinary practice which is to make the examination after the first year. The Kansas City Life, which is seemingly a favorite of Vandiver's has not been examined in four years."

"Vandiver was unfair in his findings. He called in for one examination actuaries from Kansas, Louisiana and Wisconsin, and brought men from his own office. The Kansas and Wisconsin departments found that we had $156,000 in addition to our capital stock. Afterward, the Louisiana actuary found practically the same thing. But Vandiver found that we were insolvent to the amount of $40,000. He refused to give us credit for our unreported premiums, as is the rule, and he refused to credit us for other assets, and counted some of our cancelled policies as claims."

Says Company is Solvent.

"He now says that we are $124,000 to the bad, but I tell you we are solvent; and that if any other life insurance company except the very largest, were judged by the same standard that we were judged by, it would be called insolvent."

"It is against the law to use a man who is interested in another life insurance company for such examinations. Vandiver has violated the law. He brought in a man from Illinois, who is the actuary for the Illinois State Life; and on another occasion, used a man who is interested in a life insurance company. This man McVoy, of Vandiver's office, who worked on our books, couldn't make a report that would stand in court five minutes. He's not a recognized actuary. McVoy has been promised, I am told, a job with the Trans-Mississippi Life Company."

"More than all this, I can and will prove that Vandiver said he was prejudiced against this company. Vandiver has tried to send me to the penitentiary and has persecuted me in many ways. I am going to sue him, and sue others who have been fighting me."

Sues Van Laningham—James B. Wright Says He Bought Ten Shares of Stock of Great Western Life on False Representations.

A suit was filed in the circuit court this morning by James B. Wright of Trenton, Missouri, for $7,300 damages against
263 O. L. Van Laningham and other officers of the Great Western Life Insurance Company.

In his petition, Wright says that on March 12th, 1908, in Grundy County, Missouri, the officers of the Great Western Life Insurance Company, by misrepresentations, sold to him ten shares

of the alleged increased capital stock of the Great Western Company. He declares that he gave his note for the same, and that on the same day the note was sold to the Farmer's Exchange Bank of Trenton, Missouri. He asserts that the officers of the insurance company represented to him that the capital stock of the company by the approval and authority of the State insurance Department had been increased $500,000; that one person had bought and paid for in cash $46,000 of the increased capital stock; that all of the capital stock of the insurance company had been purchased and was held by individuals; that on account of the surplus fund that had been accumulated, the books showed that the real value of the capital stock was $231 per share instead of $100, and that all of the forms of policies, contracts, certificates, and methods of transacting business by said insurance corporation, had been approved by the State Insurance Department.

Wright declares that the defendants had misrepresented the facts to him, that the State Insurance Department had never authorized or approved of any increase of the capital stock of the Great Western Life Insurance Company; that no individual had bought $46,000 of the alleged increased capital stock of the company; that the capital stock was not owned by individuals, but that the capital stock of $100,000 of the company was originally purchased and held by the Great Western Agency Company, a Colorado corporation acting as a holding company. Wright asks for $2,300 actual damages and $5,000 punitive damages. The defendants in the suit are O. L. and Julia Van Laningham, A. M. Whisner, E. L. Biersmith, L. N. Paquin, James E. Smith, Joseph T. Kendall, Samuel Quinn, William Thompson and G. R. Rhoades."

(K. C. Post, Front Page, July 29th, 1908.)

"Charge Bid of Kansas City Life was not the Highest.

Van Laningham Says He Has Information That Philadelphia Offered the Largest Sum. Will Fight Confirmation of Sale of Assets to Kansas City Life.

The Great Western Life Insurance muddle was prolific in developments today.

Former president O. L. Van Laningham announced today that according to information received by him the Philadelphia Life Insurance Company's bid was the highest; and that if he and his attorneys are correct in their interpretation, there will be a strong fight to prevent the confirmation of the recommendation of 251 Receiver Jobes making the sale of the Great Western assets to the Kansas City Life Insurance Company.

State Superintendent Vandiver today replied to the charges of Van Laningham in a vitriolic manner. He says that it is true that he tried to send the former life insurance president to the penitentiary.

A letter from J. B. Case, president of the Great Western Life In-

surance Company, has come to light, in which President Case solicits subscriptions for Trans-Mississippi Life stock. Judge E. L. Scarritt admits that this company was organized for the sole purpose of taking over the Great Western assets; that its incorporation has not been completed and will not be.

Fred W. Fleming, secretary of the Kansas City Life Insurance Company denies any collusion between his company and any other in making the bids.

President J. B. Reynolds of the Kansas City Life Insurance Company, has issued a statement of similar import, in which he added, however, that the bid of his company was submitted shortly before noon yesterday. The bids closed at noon.

Receiver Jobes denied that the Pioneer Trust Company, of which he is vice president, intended to back the Trans-Mississippi, several incorporators of which are in the offices of the Pioneer Trust.

One of the surprises of the case came to light at one o'clock this morning, when it was found that the Kansas City Life Insurance Company had bid upon the Great Western assets. An officer of the company had stated to the Post, and the statement was published, that the Kansas City Life would not bid.

Former president Van Laningham of the Great Western has this to say concerning his intention to fight the confirmation of the bid of the Kansas City Life Insurance Company:

"So far as I have been able to learn, the bid of the Philadelphia Life is higher and better than the bid of the Kansas City Life. I may be mistaken in this, but my attorneys will investigate the matter."

"The bid of the Kansas City Life, according to the information I have, is for $300,000."

"The bid of the Philadelphia Life, which was submitted at my suggestion, was in two parts, as requested in the advertisements. It bid $243,000 on the assets outside of insurance. It bid $5.50 per thousand on renewals. On the basis of twelve million dollars in renewals, this would make their bid total $308,000. On the basis of the renewal of all the twenty-three million dollars in force, the bid would amount to $369,000."

"This company went still further. It agreed that twenty-five per cent of the profits of the renewals should be set aside to repay the holders of annuity certificates and stockholders in the agency company until they were paid."

"We can not tell certainly whether this bid was better than others until the report of the receiver is filed some time today. That
265 report will be examined, and if there are grounds for appealing to the court under Judge Phillips' order, we will do so."

Statement of Van Langingham Faction.

The following statement was issued by the Van Langingham faction of the Great Western this morning:

"The capitalization of the Great Western Agency Company was by no means the capitalization of debts or a new venture. The system has been used and is now in use by several life insurance com-

panies in the United States, such as the Massachusetts Mutual, Franklin Life, State Life of Indianapolis, Columbian National, Security National—in fact, twenty-five per cent of the life insurance companies have stocked general agencies representing them.

When the Great Western Agency Company was organized, it was capitalized for two million dollars, of which $500,000 was issued to Mr. Van Laningham for his contract with the State Life, the remaining $1,500,000 was placed in the treasury of the company.

During the year 1906, under the contract of Van Laningham, assigned to the Great Western Agency Company for his $500,000 worth of stock, he received as his commission under this contract the total sum of $65,000, and in addition thereto, all of his traveling expenses. During the year 1905, the contract produced for Mr. Van Laningham over all office expenses, traveling expenses, etc., $28,422.16. During the year 1904, it produced $13,740.64. The year's earnings before that could be easily ascertained from the State Life Insurance Company. Mr. Van Langingham held a contract with the State Life Insurance Company of Indianapolis, Indiana, dated April 9th, 1904, running for ten years, in which he was to receive $1,000 per month, a guarantee, and all traveling and office expenses for the ten years. In addition to this, during the three years the contract was in force other commissions produced from $12,000 to $65,000 per year. Mr. Van Laningham gave a bond to the State Life Insurance Company of $10,000, to the effect that he remain with the company for a period of ten years. When the Great Western Agency Company was organized, this contract was turned over to that company; and all the earnings of the same. The earnings of the contract the year the Great Western Agency Company operated it, netted them over $50,000.

Value of Agency Contracts.

The value of general agency contracts is fully demonstrated by the enormous prices that many companies have paid to purchase the contracts. The Mutual Life Insurance Company of New York very recently paid its Maryland general agency $500,000 for the surrender of his contract for that state alone.

C. W. Moore, agent for the New York Life Insurance Company, sold his Michigan contract for $100,000, after having it for only a short time.

266 Mr. John C. Day, manager of the Equitable Life Insurance Company in Michigan, sold his contract to the company for $100,000.

In recent insurance company publications, there is reported the purchase of the "plant agency" representing the New York Life Insurance Company for the states of Southern Georgia, all of Florida, by the New York Life Insurance Company, which paid one million dollars to the plant agency for the cancellation of the contract. The other half of the territory was previously sold for $500,000.

Mr. I. Layton Register, of Philadelphia, general agent for the

New York Life Insurance Company has it is reported, refused one million dollars for his contract.

The New York Life Insurance Company recently paid W. C Van Arsdale, of Indianapolis, $40,000 for his contract, which embodied only one-third of Indiana.

If Mr. Van Laningham secured, according to the statement in the Star, only $90,00- for his promotion fee for the Great Western Agency Company and turned over to that company a contract that would have netted him $65,000, he is a bigger fool than we gave him credit of being. The only indebtedness that was capitalized with the Great Western Agency Company was $25,000. The twenty-five per cent dividends declared on the capital stock of the company, was earned by the company during the year, which the books will show, and was not declared and paid in order to sell more stock in the company, as the company had quit selling stock before the dividend was declared. Not a dollar's worth of the company's stock has been sold since the twenty-five per cent dividend was paid."

(K. C. Star, Front Page, July 28th, 1908.)

. . . . . .

"Stops Great Western Sale.

The Federal Court Holds Up the Life Company's Auction.

Creditors Complain That Certain Bidders for the Assets Were Favored. Judge Phillips Gives Them Two Weeks to File Objections.

The sale of the assets of the Great Western Life Insurance Company has been held up by Judge John F. Phillips of the Federal Court. Creditors complained that favoritism was shown in receiving the bids and applied for a postponement. Judge Phillips denied these applications, but ruled that complainants might have two weeks in which to file objections.

Creditors of the Great Western Company and Agency Company desiring to bid, complained of the manner in which the sale of the assets was conducted. They charged that the sale was being managed in such a way as to exclude all bidders except the Trans-Mississippi Life Insurance Company, promoted by C. S. Jobes, Receiver, and J. B. Case, President of the Great Western Life Insurance Company.

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Who the Complainants Are.

One suit to postpone was brought by the firm of Waggener, Orr & Doster, of Atchison, Kansas, representing stockholders. The other application for postponement was made by the original complainants in the case of the Columbian Life Insurance Company of Boston.

A Sale Agreement Violated?

The objection of the Columbian Life Insurance Company presented by J. C. Jones, of Jones, Hocker & Jones of St. L counsel for the company. Its contention is that the two week lowed for the publication of the advertisement of the sale of assets of the Great Western Company was insufficient notice t and other companies that desired to bid; also that it (the Col bian Company) had learned of the sale too late to gather the formation necessary to make an intelligent bid.

The petition stated that the Columbian Company wanted to and that a number of other companies also desired to bid. attorney for the complainants who joined in the application, char in court that the order of sale was not in accordance with an ag ment made with him by E. L. Scarritt, attorney for the recei At the time the order of sale was made, he said it was distinc agreed that the time for receiving bids would be two weeks after last insertion of the advertisement, whereas the order, as actua made, gave them only one day.

Too Short a Time for Bids.

It was shown Judge Phillips that no company could make a b in such a short time, and the court was asked that the receiver be i structed to notify by letter the home office of each company, doi business in the State, of the time and the place of the proposed sa They asked that this time be extended to August 10th. Jud Phillips denied this application.

The petition presented by Waggener, Orr & Doster, of Atchiso was practically along the same grounds as the application made b the Columbian Insurance Company. Judge Phillips qualified h refusal for a postponement of the sale and the time for receiving bid by granting two weeks in which stockholders and creditors mig file objections to the sale.

The Trans-Mississippi Company.

Insurance men who are here, say that this decision will be of benefit, for the reason that the time for receiving bids has expire The failure of postponement has resulted, they say, in making it i possible for several companies who desire to bid, to buy the ass of the defunct company.

The Trans-Mississippi Insurance Company was organized seve weeks ago. The directors named in the published notice we clerks in the office of Scarritt, Griffith & Jones, and the Pione Trust Company. E. L. Scarritt is attorney for C. S. Jobes, Recei of the Great Western Life Insurance Company, who is also vi president of the Pioneer Trust Company.

268 C. S. Jobes, Receiver, said this afternoon that the time f receiving bids had expired at noon, but that the bids wou

not be opened until the presence of W. D. Vandiver, State Insurance Commissioner, could be assured.

The Stockholders Charge Fraud. The Suit Against the Great Western Officers for $7,310 Brought by J. B. Wright.

O. L. Van Laningham and other former officers and agents of the Great Western Life Insurance Company were sued in the Circuit Court this morning by James B. Wright of Trenton, Missouri, who asked by the action to recover the value of a note for $2,310, which he gave in exchange for ten shares of stock of the company. He asked $5,000 damages in addition.

Wright gave the note March 12th, 1908, and it was negotiated by the Farmers' Exchange Bank in Trenton the same day for the full amount of its face. Wright alleges in the papers relating to the suit, that the note was obtained by misrepresentation and fraud; that the agents of the company represented that the capital stock of the company had been increased from $100,000 to $600,000; that the Insurance Department of the State of Missouri had approved the increase; that the forms of policies and contracts, and all methods of transacting business of the insurance corporation, had been submitted to the Insurance Department and approved; and that the cost of selling stock in the corporation had not exceeded ten per cent of the par value of the stock.

All of these allegations made to him, he says, by the agents of the company, had the effect of inducing him to buy ten shares of the stock. Afterward, he found that the company had not increased its capital stock, and that the Insurance Department of Missouri had refused to approve such an increase. Also, he alleges the agent misrepresented and overstated the income of the insurance corporation, and concealed from him that $40,000 had been borrowed of two banks in Kansas City.

He asks the court for judgment against O. L. Van Laningham, Julia Van Laningham, A. M. Whisner, E. L. Biersmith, L. M. Paquin, James E. Smith, Joseph T. Kendall, Samuel Quinn, William Thompson, and G. R. Rhoades in the sum of $2,310 as compensatory damages, and for $5,000 exemplary damages."

(*K. C. Times, Front Page, July 29th*, 1908.)

"It Capitalized Debts.

The Accountant's Report Tells How Van Laningham Promoted the Great Western Agency Company.

Stockholders to Lose All.

Results of the Receiver's Investigation Were Filed in the Federal Court. Wildcat Methods Found.

The Two Million Capitalization Was Worthless. Only $19.51 Left in the Company's Treasury.

A Fake Dividend Declared.

269 Resources of a Questionable Character Amount to $139,648.47. Liabilities are $832,601.47.

The lid was taken off the transactions of the Great Western Agency Company in a 150-page report filed yesterday afternoon in the Federal Court by H. E. Patterson, an accountant. C. S. Jobes, the receiver of the company, directed the investigation to be made.

The report says that when O. L. Van Laningham organized the Great Western Agency Company, he merely capitalized his debts for 2 million dollars, and became a "walking advertisement of a wonderful investment." Many irregularities and wild-cat methods are pointed out. The stockholders may expect nothing in return for their money, according to the report.

The total cash receipts of the company were $575,518.65, and the expenditures $575,499.14 leaving a cash balance on hand of $19.51 when the company went into the hands of a receiver. The assets of the company, according to the accountant, were $139,648.47, and the liabilities $832,601.47.

'While the statement shows the assets to amount to $139,648.47, the report said 'It is merely a statement of book values, and the true value can not be ascertained until the affairs of the company are liquidated. However, from the knowledge which we have gained by the examination of the books and records, we are of the opinion that the stockholders will realize nothing.'

Van Laningham Capitalized Debts.

'We find O. L. Van Laningham and his associates capitalized for 2 million dollars the debts of himself and his associates, hanging or clustering about a contract with the State Life Insurance Company of Indianapolis, Indiana. We further find O. L. Van Laningham sending out his agents and associates into various counties and selling the great capitalization of debts, not at five

per cent or ten per cent on the dollar as do those with a hole in the ground, but selling it at sixty per cent. The 2 million capitalization is sold at the rate of $3,200,000.00, $16.00 a share par value of $10.00.'

'In looking over the list of names, we wondered how they could be tempted to bite at such a proposition.'

A Dividend of 25 per Cent Declared.

'After the company has received from its stockholders the sum of $470,000.00 in cash net from the sale of its stock, based upon debts, we find it paying the promotor the magnificient sum of $90,000.00 for his promotion of the stock, the sum of $140,000.00 of his debts, the cancellation of the thing capitalized, leaving the stockholders without any source of income, the declaring of a dividend of 25 per cent, or in round numbers $80,000.00 being returned to the stockholders, so that he would become a walking advertisement of a wonderful investment, thus preparing the way for the sale of more stock and graft, the taking of $100,000.00 of the stock-
270 holders' money to start the life insurance company, and then saying to the stockholders: You may come in if you will pay the difference between what you have already paid on your stock and $2.31, the price at which I value the stock.'

Why a Receiver Was Asked For.

'And at last when the money is gone, when 595 of the 991 shares of its stock in the Great Western Life Insurance Company, its tangible asset is pledged as collateral for something borrowed, when its outstanding obligations amount to $832,601.47, we find the man who did these things bringing suit for a receiver, as we believe, to cut off the demands of innocent purchasers of stock to satisfy debts for which he might be held personally responsible by the receiver of the State Agency Company.'

The assets of the Great Western Agency Company were offered for sale under the direction of the Federal Court. The bids were to have been opened yesterday, but the time was extended two weeks by order of Judge Phillips in the Federal Court, to give objectors an opportunity to file complaints. A complaint was made that partiality had been shown to some of the bidders.

The Receipts and Expenditures.

The itemized list of receipts and expenditures of the Agency Company is shown by the report as follows:

Cash Received.

Sale of Stock	$417,121.17
Interest	271.21
Insurance, State Life Insurance Company	3,935.90

State Life Insurance Company on settlement	24,789.1
Underwriters' Loan & Realty Company, on purchase	1,553.5
State Agency Company, on purchase from receiver	2,331.1
Agents on balance and advances	23,104.8
Advance to Great Western Life Insurance Company returned	10,370.0
Rent	854.0
Return of traveling expenses advanced officers	120.0
Bills receivable other than payments applied on sale of stock	277.2
O. L. Van Laningham, on demand note	6,795.0
Bills payable, National Bank of Commerce	60,386.6
Sale of Great Western Life Insurance Company stock	800.0
Sale of desks, awnings and partitions	89.0
Sale of furniture to Great Western Life Insurance Company	10,000.0
State Department, return of excess remittances	9.0
Refund of surety bond of J. W. Beery	6.2
Sale of Great Western Life Insurance Company stock	12,698.5
Total	$575,518.6

271 *Disbursements of Cash.*

Cancelled stock	$7,647.2
Dividends	76,892.5
O. L. Van Laningham, stock purchased	83,955.0
O. L. Van Laningham, demand note	10,000.0
R. E. Stanley, loan	2,500.0
Premiums due State Life Insurance Company	4,742.1
O. L. Van Laningham, note due State Life Insurance Company	25,000.0
Purchase of State Agency Company from receivers	110,658.2
Purchase of Underwriters L. & R. Company contract	519.1
Note due National Bank Commerce	20,000.0
Bonds of Home Telephone Company	2.5
Purchase of contracts from bonus agents	8,339.1
Stock of Great Western Life Insurance Company	100,000.0
Advanced to Great Western Life Insurance Company	1,000.0
Amount received for sale of Great Western Life Insurance Company, stock sold as brokers	12,698.5
Furniture and fixtures	3,873.1
Advanced to agents	41,274.9
Commissions to agents	21,726.1
John V. Hogan, part of account	3,475.0
Interest and exchange	175.0
Rent	2,829.9
Traveling expenses of agents and officers	5,314.5
Fees and taxes to State Department	1,766.7
Bonds of officers	75.0
Reports of Dunn Mercantile Agency	50.0

Salaries	15,862.00
Postage, telegraph and telephone	1,740.63
Printing, stationery, etc.	3,479.36
Subscriptions and advertisements	4,171.08
Incidentals	382.96
Legal services	2,260.15
Outside office expenses	2,527.86
Protest fees	9.40
Auditing accounts	300.00
Total	$575,499.14"

(*K. C. Star, Front Page, July 29th*, 1908.)

"Is Life Asset Bid Higher?

Details of the Philadelphia Company's Great Western Offer.

The Actuary of the Eastern Makes Public Its Proposal. Terms Better He Says Than Those of the Kansas City Life That Were Accepted.

Ernest M. Blehl, actuary of the Philadelphia Life Insurance Company, stated this morning that the bid made by his company for the assets and re-insurance of the Great Western Life Insurance Company was higher than the bid accepted. C. S. Jobes, 272 receiver, and W. D. Vandiver, State Insurance Superintendent, announced last night that the bid of the Kansas City Life Insurance Company had been accepted.

The sale has not been confirmed by the Federal Court, and if a showing is made that the stockholders and creditors may fare better by another bid, the choice of the receiver may be set aside.

The receiver issued a statement last night that three bids had been submitted. His statement gave only the amount bid for the assets of the Great Western. No statement was made as to the bids for the re-insurance of the policies carried by the company. It was announced that the contract would be given to the Kansas City Life Insurance Company, which bid $300,000.00. The Trans-Mississippi Company's bid was $285,000.00, and the Philadelphia Life Insurance Company's bid was $243,000.00.

A Chance for Annuity Holders, Too.

A closer analysis develops that there were features of the bids not covered by the statement of the receiver. The Kansas City Life bid $300,000.00 for the assets. In addition, the company offered $5.00 a thousand for the insurance policies that the holders would be willing to renew in its company.

The offer of the Philadelphia company is $243,000.00 for the assets, and also $5.50 a thousand for all the insurance policies on the books

of the company at the time of the acceptance of the bid, with a minimum of $65,000.00. In addition, the Philadelphia Company offers to give 25 per cent of its net profits after the first year to the holders of the agency and annuity certificates.

A Minimum of $65,000.00 for Policies.

The offer of the Philadelphia Company is:

'The Philadelphia desires to re-insure the insurance business of The Great Western and hereby proposes to pay therefor the sum of Five Dollars and Fifty cents ($5.50) per One Thousand ($1,000.00) Dollars, for all the insurance in force, according to the terms of the policies on the date of acceptance of this proposal; provided that wherever the sum of Five Dollars and Fifty cents ($5.50) for One Thousand ($1,000.00) Dollars of insurance is in excess of the actual reserve valuation on any policy, only the reserve will be paid on that policy; and further provided that in no event will the total payment for all insurance be less than Sixty Five Thousand ($65,000.00) Dollars, and further provided that The Great Western is to make to the Philadelphia such cash payment of the full actual policy reserve and all other liabilities, under the policy contracts assumed hereunder, as may be required by the Insurance Commissioners of the States of Missouri and Pennsylvania, said valuation to be computed on the American Experience Table of Mortality with interest at three and one half per centum per annum.

The Philadelphia further proposes to pay in cash within ninety (90) days after the completion of the said re-insurance, the sum of
Two Hundred and Forty-three Thousand ($243,000.00)
273 Dollars for all assets of the said Great Western, clear of every liability and debt whatsoever, said assets to cover all assets placed in the hands of the Receiver of The Great Western when he took possesion, as well as all income from every source received since, excepting the sum of Fourteen Thousand Six Hundred and Fifteen ($14,615.00) Dollars or about that sum, held or received in trust on account of sale of proposed issue of insurance capital stock of The Great Western.'

For Premium Payments $21,000.00.

'The Philadelphia further proposes to apply the item of Twenty-One ($21,000.00) Dollars or about that sum, now held in trust on account of premiums to the payment of premiums on the policies for which they were remitted, thus placing said policies in force provided, however, that if any policy holder shall, within fifteen (15) days from the date of the acceptance of this bid, object in writing to the application of any premium remitted by him and which is included in the said fund of Twenty-one Thousand ($21,000.00) Dollars to the payment of the premium on the policy held by him, then said amount remitted by him shall be returned to him and the policy held by him definitely cancelled.

The Philadelphia further proposes at the end of each calendar year hereafter to make a complete investigation of the profits derived from the insurance transferred from The Great Western and then in force, and after sufficient profits have been earned to cover the cost of this business to the Philadelphia, twenty-five (25%) per cent of all net profits remaining shall in each year thereafter be payable to the Trustee appointed by The Great Western Agency stockholders, who have paid for the stock owned by them respectively in cash and the annuity certificate holders who have paid for the certificates respectively owned by them in cash, for distribution, the said Trustee being solely responsible to the Great Western Agency stockholders and the annuity certificate holders; provided that if the business so transferred shows a loss in any calendar year then said loss shall be carried into the following year or years and deducted from the profits then earned to obtain the net profits.'

The Other Bids Not Public

The Philadelphia has been in business with its home offices in Philadelphia, since October, 1905. It has a total surplus of $880,000.00, assets amounting to $1,300,000.00, and 18 million dollars of life insurance in force.

The Kansas City Life Insurance Company has assets amounting to $1,036,643.23, and according to its prospectus, 16 million dollars of insurance in force.

Ernest M. Blehl, actuary of the Philadelphia Company, furnished the Star a copy of the bid of his company. Officers of the Kansas City Life Company refused to furnish a copy of its bid, with the statement that only one copy had been made and that had been filed with C. S. Jobes, the receiver of the Great Western. Jobes said the terms of the bids would not be made public until filed in the Federal Court."

274 (*K. C. Times, Front Page, July 30th*, 1908.)

"Stand Pat On Life Bids.

Federal Court to be Asked to approve the Great Western Sale. W. D. Vandiver, State Insurance Superintendent, Returned to Jefferson City Last Night. His Statement of the Case. More Developments Yesterday.

C. S. Jobes, receiver for the Great Western Life Insurance Company, will file in the Federal Court this morning his recommendation that the bid of the Kansas City Life Insurance Company for the assets of the Great Western be accepted. The bid proposes the payment at once of a lump sum of $300,000.00, with detailed modifications not yet made public. The recommendation was prepared Tuesday night, and was approved by W. D. Vandiver, State Superintendent of Insurance. Mr. Jobes said yesterday that the terms

of all three bids would be made public when they were filed with the court.

According to Judge Phillips' order upholding the manner of receiving the bids, but allowing fifteen days from the filing for objections, the court will take no final action today.

Annuity Holders May Act.

Mr. Jobes and Mr. Vandiver are standing pat on their selection of the Kansas City Life Insurance Company as the best bidder for the assets of the defunct insurance company. Nothing short of an appeal to the Federal Court and a reversal of the recommendation of Jobes and Vandiver will prevent the Kansas City Life Company from securing the assets.

There are a number of holders of agency stock and annuity certificates who are trying to organize a company for the purpose of rehabilitating the Great Western and continuing it in business with new men at the head.

This would require more than $400,000.00 by way of preliminary expenditure before the re-organized company could begin to do business.

It was this condition that prompted J. B. Case and his associates to quit a similar purpose. Then the Trans-Mississippi Company was promoted, and it narrowly missed securing the assets. An internal dissention rent the company, and the Kansas City Life Insurance Company got the prize, that is, if the Federal Court approves and confirms the sale.

The new movement to reorganize the old company has its origin in Kansas, and a meeting has been called for Saturday in Topeka to consider the project.

Old Officers to Retire.

J. B. Case, President, and the other new officers of the Great Western Life will continue to hold their offices until a bid for the assets is approved by the court. Their last official duty will be to transfer the title to the property. With that, the Great Western Life Insurance Company will go out of existence. Afterward, however, the funds realized by the transfer of the assets will be distributed among the creditors by the receiver acting under the order of the court."

(*K. C. Times, Front Page, July* 31*st*, 1908.)

"To Contest the Life Sale.

Other Debtors Retain Lawyers in the Great Western Case.

A Summary of the Bids of the Three Companies as Filed in the Federal Court. Are Other Prospective Bidders Out of it?

The Kansas City Life Insurance Company will not get the assets and business of the Great Western Life Insurance Company without a contest.

J. H. Perry, Vice-President and General Manager of the Philadelphia Insurance Company and Ernest M. Blehl, Actuary for the company, remained in Kansas City yesterday, in the hope of finding out the terms of the bids offered by the other companies bidding. Before they left Kansas City last night, they retained attorneys and instructed them to contest the approval of the contract recommended by C. S. Jobes, the receiver.

The Bids Filed in Court.

Mr. Jobes filed his report with the Federal Court late yesterday afternoon. The report details the history of the sale from the order of the court July 6th, to the opening of the bids the night of July 28th. He says that he and W. D. Vandiver, State Insurance Superintendent, examined the bids and agreed that the bid and proposal offered by the Kansas City Life Insurance Company was the best. They join in a recommendation that the court approve the transfer to the Kansas City Life.

Copies of the bids of the three companies bidding were filed with the report. The three companies bidding included the Philadelphia Life, the Kansas City Life, and the Trans-Mississippi Company.

The Philadelphia Bid.

The offer of the Philadelphia Life Insurance Company is $243,000.00 for the assets, and also $5.50 a thousand for all the insurance policies on the books of the company at the time of the acceptance of the bid, with a minimum of $65,000.00. In addition, the Philadelphia Company offers to give 25 per cent of its net profits after the first year to the holders of the agency, and the annuity certificates.

The Kansas City Life's Offer.

The Kansas City Life Company bid $300,000.00 for the assets, and a commission of $5.00 a thousand on policies outstanding that may be continued in force under the re-insurance contract. The reserve fund with the State Department is to be maintained. Provision is made for reinstatement of lapsed policies. Cash payment of the amount bid is to be made at once.

An amount equal to the legal reserve on the business in force of the Great Western is to be deducted from the bid. This amount is figured at $149,748.95. There is to be a further reduction from the bid of $25,803.45, renewal premiums since May, 1908. The bid further offers to pay one dollar a thousand as commission on all business continuing in force each year for five years.

The Trans-Mississippi Bid.

The Trans-Mississippi bid was $284,898.27 for the assets, the bidder to assume the reserve liability which is put at $158,725.50. This bid was signed by Edward North, an incorporator.

Charles M. Howell, the attorney retained by the Philadelphia Life Insurance Company, said last night that unless some unexpected condition arose, the Philadelphia would file an objection to the approval by the court of the Kansas City Life Company's bid. The Philadelphia Company still believes its bid was higher than the Kansas City Life Company. Mr. Howell is also attorney for O. L. Van Laningham, former president of the Great Western.

If Judge Phillips should refuse to approve the bid of the Kansas City Life, he might either order the receiver to reconsider the three bids already received and opened, or else order a re-advertisement for bids. The latter order would give all companies a chance.

They'd Be Willing to Bid.

'I can say, both for Mr. Van Laningham and for the Philadelphia,' Mr. Howell said, 'that neither would object to another general bidding. It was through Mr. Van Laningham that the Philadelphia Company became interested in the matter. His interest, as well as that of all the stockholders, was to have as many bidders as possible in order to secure the best return from the sale of the assets.'

It was also reported last night that a group of Kansas stockholders, represented by Waggener, Orr & Dorter, of Atchison, might be expected to file a bill of exception with the court, on the ground of insufficient advertisement of bids."

Mr. Neel: That is all, Mr. Stevenson.

Witness excused.

Mr. Neel: That is our case, with the exception I want the right to show there was no appeal from the Wagstaff case in the Federal Court.

The Court: Any question about that?

Mr. Landon: I don't think there was any appeal. That is in the final record.

277 Mr. Neel: Do we definitely understand that it is admitted that the Wagstaff case was not appealed from?

Mr. Landon: No, it wasn't appealed from. You have in evidence here the final order.

Mr. Neel: It does not say it wasn't appealed from.
Mr. Landon: It just says it was dismissed.
Mr. Neel: We understand, then, that case wasn't appealed.
Mr. Landon: It wasn't appealed, no, sir.

The Court: I would like to ask one more question of Mr. Stevenson.

GEORGE STEVENSON, recalled as a witness on the part of the defendant, testified further as follows:

By the Court:

Q. Were stockholders required to surrender their stock upon the same basis that the certificate holders were required to surrender theirs?
A. The Agency stockholders?
Q. Yes, sir.
A. Yes, sir.
Q. The stock was surrendered and cancelled and new stock issued in place of it?
A. Yes, sir.
Q. On the basis of fifty per cent of the cash actually paid in?
A. Yes, sir.
Q. That left how much stock in the treasury of the company?
A. Well, it would have left at that time what would be the difference between one hundred and thirty thousand and two hundred thousand, as I understand, unissued. But the Federal Court ordered that it should not be sold for less than two hundred dollars a share, and afterwards it was all taken up.

By Mr. Cooper:

Q. You mean after the twenty days was up?
A. Yes, sir. I will say, for the information of the court, that the re-organization of the new company didn't,—I think the Federal Court stipulated that the annuity certificate holders should come in within twenty days and pay their assesment or be barred, and gave sixty days to the Agency stockholders or be barred, but the company didn't take advantage of that and even took their assessments several months after that.

Mr. Landon: I move that that be stricken out as wholly immaterial.
The Court: Sustained.

To which ruling and action of the court the defendant then and there at the time duly excepted and still excepts.

By the Court:

Q. All of the stockholders were required to surrender their stock?
A. The agency stock.

Q. And all they got in return for that is fifty per cent of what cash they actually paid in?

A. Yes, sir.

278 Q. And if they only paid in $37.50 they would only get one-half of that in stock?

A. Yes, sir.

Q. That would leave a surplus stock in the company of how much?

A. Well, at the time of the re-organization I don't just,—I can't quite get it clear in my mind just what the plan was, except that one hundred thousand dollars of original capital didn't raise sufficient funds.

Q. That is true, but it would still leave a surplus. What became of that surplus stock, that is what I want to know.

A. Well, it was finally disposed of and sold until the company had two hundred thousand dollars.

By Mr. Neel:

Q. Was it put in the treasury of the company?

A. Yes, sir, in the treasury.

Q. Was it sold out of the treasury,—treasury stock?

A. Well, the trustee of the re-organized company sold the stock.

Q. Then did that money go into the treasury?

A. Went right back into the treasury.

Q. Did that sell for two hundred dollars, as I understand?

A. Yes, sir.

Q. Bona fide sales?

A. Yes, sir.

Q. Did it all sell at the rate of two hundred dollars or not?

A. Two hundred dollars.

Q. And the money went into the treasury?

A. Yes, sir.

Q. Was that surplus stock of the entire issue above what went to the annuity certificate holders and the former stockholders of the Agency Company?

A. Yes, sir.

By Mr. Landon:

Q. Now, Mr. Stevenson, the Great Western Agency Company owned 992 shares of Great Western Life Insurance Company stock, didn't it?

A. Yes, sir, I think that left——

Q. (Interrupting.) That left only eight shares outstanding?

A. Yes, sir.

Q. So that all of the shares of stock of the Great Western Life Insurance Company had been issued?

A. I presume so. That was under Mr. Van Landingham.

Q. And there wasn't any new issue of stock of the Life Insurance Company?

By the Court:

Q. That old stock was surrendered and cancelled, was it not?
A. I think that is right.

By Mr. Landon:

Q. Then one hundred thousand dollars worth of stock of the Great Western Life Insurance Company, only, was issued?
A. Yes, sir.
Q. One hundred thousand dollars of Great Western Life Insurance Company stock was issued after new officers were elected?
A. Yes, sir.
279 Q. Was the capital increased?
A. No, sir.

By the Court:

Q. How much stock was issued to the holder of agency stock?
A. Well, in the proportion of their assessment, whatever that might be. If a man had one hundred shares of Agency stock,—an investor had one hundred shares of Agency stock that would represent sixteen hundred dollars to him, and the assessment on that would be four hundred dollars, and therefore he would receive two hundred dollars of the re-organized company's stock for the four hundred dollars.
Q. By the time they had all been supplied with stock under that arrangement there would be quite a block of stock left in the treasury?
A. There was at the time of the re-organization. That was one reason that the re-organized company allowed them to come in longer than the time allowed by the court, was to take up the surplus stock, and this money was turned into the treasury of the company.
Q. That represented capital created by the stockholders and the annuity certificate holders who came into this organization?
A. Yes, sir.
Q. It was property purely of their creation?
A. Yes, sir.

By Mr. Sherman:

Q. Well, the company had other property besides that, of course?
A. Well, fixtures.
Q. Didn't you say they paid something like one hundred and thirty thousand dollars of indebtedness?
A. Yes, sir. There is an exact list of what was paid, or ordered to be paid at that time under the court's decree. I don't just remember what the round total was. It was upwards of one hundred and twenty thousand dollars, I think.
Q. And that left the capital stock unimpaired and left a surplus over?
A. A few thousand dollars, if I remember right. About the first statement was something like perhaps four or five thousand dollars. I am not right certain about that, but I think that is about right.

By the Court:

Q. As I understand it, 992 shares of Agency stock was surrendered by the holders thereof without consideration?

A. Yes, sir.

Q. They then became purchasers of stock under the re-organization at fifty cents on the dollar?

A. Yes, sir.

Q. The money which they paid in for this re-organization stock, and the money realized out of the stock which they voluntarily turned into the company, represented practically all of the assets of the company?

A. Yes, sir.

Mr. Sherman: With the exception, as I understand it, that when they finished the re-organization they had the one hundred
280 thousand dollars capital stock unimpaired, and also a surplus and had paid one hundred thirty thousand dollars indebtedness.

The Court: That isn't the witness' testimony.

Mr. Sherman: I understood it was.

The Court: The witness understands that all this stock was turned in gratis to the company. The company was made a present of all this stock, and also of all the certificates of the certificate holders who come in. They then bought stock in the re-organized company. In other words, bought back their own stock, getting fifty cents on the dollar. The surplus represented what these men had actually given to the company as a present.

By Mr. Sherman:

Q. When the re-organization was completed, all they had collected of the Agency stockholders and the annuity certificate holders was one hundred and thirty thousand dollars, isn't that right?

A. Yes, sir, that is as I understand it.

Q. And then the company was turned over with its full capital unimpaired and with a surplus in the treasury.

The Court: That isn't the witness's testimony as I understand it.

Q. That is just what I understand him. Wasn't the capital stock fully paid up and unimpaired and you had a surplus at the time the re-organization was completed?

A. Well, no, I wouldn't consider it that way, for the reason it took about one hundred and twenty thousand dollars to pay the debts,—upwards of one hundred and twenty thousand dollars to pay the debts, that was ordered to be paid by the company.

Q. But you could not do business unless your capital stock was unimpaired and unless you had a surplus, could you?

A. Well, I don't know.

Q. The Insurance Department wouldn't let you, would they?

A. Well, we did. Whether that was just the way of it or not, I

don't know. Of course, that is quite a long time ago and it is not real clear.

By the Court:

Q. As I understand, it took the whole of this $130,000.00 to pay the debts?

A. Yes, sir, practically.

Q. And in order to re-organize, the stockholders were obliged to turn in their stock to the company gratis?

A. Yes, sir.

Q. That stock had previously been paid up in full?

A. Yes, sir.

Q. So that when the company became the owner of that stock again it was stock that had been paid up in full?

A. Yes, sir.

Q. Then that stock was re-sold?

A. Yes, sir.

Q. Two for one?

A. Yes, sir.

Q. And it was the capital which you realized from that stock——

A. (Interrupting.) That paid the debts and helped create a surplus.

281 Q. That went into the treasury?

A. Yes, sir.

Q. The surrender of this stock was made in consideration of the reorganization?

A. Yes, sir.

Q. And that was the only condition upon which it was surrendered?

A. Yes, sir.

By Mr. Sherman:

Q. How could you extend the time of these other fellows?

A. We felt that should be extended.

Q. To keep your capital unimpaired?

A. It was a wide holding, scattered over large territory, and we just felt if they wanted to come in and re-organize the company they ought to have the privilege to do so.

Q. When this $130,000.00 deal took place the company was then turned over to the new directors, wasn't it?

A. Yes, sir.

Q. And before you had sold any more of the stock?

A. Yes, sir, but as that stock was sold it was turned back into the company.

Q. To increase the surplus?

A. Yes, sir.

Q. But at the time the company was turned over to the new directors didn't it have to have its full capital unimpaired?

A. I don't know. I can't answer that question.

By the Court:

Q. You had this stock?
A. Yes, sir, we had the unissued stock.
Q. That had been previously paid up in full?
A. Yes, sir.
Q. With the understanding you were to sell that stock——
A. (Interrupting.) Two for one.
Q. (Continuing.) The Insurance Commissioner permitted you to continue business?
A. Yes, sir.

By Mr. Sherman:

Q. That would permit them to hold stock in the treasury and have nothing at all.
A. That is what we did.
Q. That is all.

Witness excused.

Mr. Cooper: I have here a list of the annuity certificate holders which has been prepared by Mr. Grenshees, and I desire to offer it in evidence.

The Court: That is a total list, is it?

Mr. Cooper: Yes, sir; total list of all that were ever issued.

The Court: There is no evidence here of those who come into the reorganization. I think it is important that that be made to appear on the record.

Mr. Cooper: I can show it from this, if counsel will permit Mr. Grenshees to testify what he made up from the record. He
282 has here an analysis showing the certificates, who got them, those who surrendered them, and those who paid, and everything.

Mr. Hill: You have the evidence that about fifty per cent came in.

The Court: Is it agreed?

Mr. Hill: Yes, sir.

Mr. Neel: The decree of the Federal Court recites at least fifty per cent come in.

Mr. Cooper: It says over fifty per cent.

Mr. Neel: The testimony shows that they come in afterwards up to about sixty or sixty-five per cent.

Mr. Cooper: Mr. Chappell says seventy-five per cent and Mr. Stevenson says sixty to sixty-five per cent.

Mr. Stevenson: Yes, sir; that was my recollection.

Said list, so offered and introduced in evidence, was marked Exhibit 44, and is in words and figures as follows:

19—797

2010.
301,500.
Ex. 44. DDD.

"List of Annuity Certificate Holders.

O=full release to Co.—either cancelled A. C. or written release.
∂=A. C. in & cancellation of Lub. questionable.
U=Paid for stock but A. C. not in.

282b

List of Annuity Certificate Holders.

			Name.		Address.	No. of shares.
	A	#142	Franklin Adams	*S*	Maple Hill, Kans.....	1
	A	256	Horace M. Adams.....	*S*	Chelsea, I. T.....	10
	A	352	J. B. Adams.....	*S*	El Dorado, Kans.....	5
	O A	338	Rebecca Agle.....	*S*	Waterville, Kansas	1—
	O A	419	A. H. Aitken.....	*S*	St. John, Kansas.....	3—
		19	Morton Albaugh	*S*	Topeka, Kans.	1
	O A	283	J. L. Aldrich.....	*S*	Ottawa, Kans.	5—×
	O A	102	E. E. Ames.....	*S*	Norton, Kans.....	1—
		424	S. B. Amidon.....	*S*	Wichita, Kans.....	5
	O	487	Harmon F. Anawalt....	*S*	Lyons, Kans.....	4×
Cancelled.						
4/13/08	[*A*	409	James W. Anderson....	*S*	St. Louis, Mo.....	5]*
	O A	452	C. F. Armstrong.....	*S*	Clyde, Kans.....	10×—

EXHIBIT "44."—*Continued.*

	Name.			Address.	No. of shares.
O A	652	C. F. Armstrong.....	*S*	" "	3X—
	275	Wm. A. Austin.....	*S*	Sylvia, Kans.....	2
O	111	Dr. J. T. Axtell.....	*S*	Newton, Kans.....	1
	494	Paul B. Bailey.....	*S*	Troy, Kans.....	5
A	337	W. J. Bailey.....	*S*	Atchison, Kans.....	1
O A	328	Bair, Mansfield	*S*	Waverly, Kans.....	2
O A	505	" "	*S*	" "	3
	618	Mrs. Flora M. Baird.....	*S*	Buffalo, N. Y. #50 Soldier's Place.....	5
A	284	James Ball	*S*	Ottawa, Kans.....	1
O	[137	Frank B. Ballein.....	*S*	Winfield, Kans.....	5]*
O	387	H. W. Balthrope.....	*S*	Hiawatha, Kans.....	8X

[*Matter enclosed in brackets erased in copy.]
[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

		Name.		Address.	No. of shares.
A	460	H. W. Baney	*S*	Holton, Kans.	1
O	344	Lee J. Barrett	*S*	Hoisington, Kans.	5—
O A	465	Mary A. Barrett	*S*	Quenemo, Kans.	2×
O A	498	E. D. Baugher	*S*	Kinsley, Kans.	3×
	357	I. W. Baughman	*S*	Ottawa, Kans.	3
O A	356	Fred C. Beck	*S*	Gypsum, Kans.	5—×
A	310	H. G. Beck	*S*	St. Louis, Mo.	1
	66	F. J. Bennest	*S*	Severy, Kans.	10
O	30	Edny D. Bennett	*S*	Peru, Kans.	1×—
A	369	N. B. Berge	*S*	Sherman, Tex.	1
A	569	" " "	*S*	" "	20
A	395	H. H. Berggren	*S*	Lindsborg, Kans	5×
O [*A*	594	Oscar B. Berglund		Gunnison, Utah	10]* C6/18-08
O A	189	J. L. Berkey	*S*	Manhattan, Kans.	10×
O A	656	" " "	*S*	" "	10×
A	648	Aline Bieri	*S*	Osage City, Kans.	5
A	576	L. Biscoe	*S*	Topeka, Kans.	7
O	521	David W. Blaine	*S*	Pratt, Kans.	1×—
O	24	Frederick F. Bliesner	*S*	Lawrence, Kans.	1×
O A	285	Willis E. Bodley, Sr.	*S*	Quenemo, Kans.	1×—
O A	322	" " "	*S*	" "	1×—
A	615	E. R. Bolton	*S*	Waco, Texas	7
A	615	" " "	*S*	" "	8
A	333	Aline Bieri	*S*	Osage City, Kans.	5

[*Matter enclosed in brackets erased in copy.]
[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

		Name.			Address.	No. of shares.
	61	H. J. Bone	*S*		Topeka, Kans.	1
A	286	F. B. Bonebrake	*S*		Osage City, Kans.	3
A	382	Daniel E. Boone	*S*		Wichita, Kans. 4th Nat'l Bank Bldg.	1
O A	210	O. S. Bowers	*S*		Ramona, Kans.	1×
	46	H. C. Bowman	*S*		Newton, Kans.	2
A		[Geo. H. Bradford			Wichita, Ks. 321 S. Main	7]*
O A	624	H. O. Bradley	*S*	@	Clyde, Kans.	1—
O A	625	" " "	*S*	@	" "	1—
O A	626	" " "	*S*	@	" "	1—
O A	627	" " "	*S*	@	" "	1—
O A	628	" " "	*S*	@	" "	1—
A	1	J. E. Brady	*S*		Kansas City, Mo.	10
A	318	S. N. Bridgman	*S*		Wichita, Kans.	2
O A	75	J. H. Brierly	*S*		Glasco, Kans.	2×
	345	Julius Brookel	*S*		Redwing, Kans.	1
	532	" "	*S*		" "	1
O	125	W. W. Bromelsick	*S*		Eudora, Kans.	5×
O A	68½	S. L. Brooking	*S*		Paola, Kans.	2×
A	211	Geo. W. Brooks	*S*		Topeka, Kans.	1
O	220	K. L. Browne	*S*		Kansas City, Mo.	1—
O	221	" " "	*S*		" " "	1—
	154	F. H. Brunig	*S*		Kansas City, Mo.	2
A	327	W. P. Burrows	*S*		Waverly, Kans.	2
O A	99	J. H. Butler	*S*		Cherryvale, Kans.	10×

*[Matter enclosed in brackets erased in copy.]
[All letters and signs in Italic added to the original list of names. See legend on page 282e.]

		Name.			Address.	No. of shares.	
A	614	Mrs. Flora B. Cameron	*S*		Waco, Tex.	8	
A	642	" " " "	*S*	@	" "	7	
A	417	W. W. Cameron	*S*		Waco, Tex.	10	
A	641	" " "	*S*	@	" "	5	
A	70	Arthur Capper	*S*	@	Topeka, Kans.	2	
O	287	Early Carder	*S*		Quenemo, Kans.	2	X—
O	368	" "	*S*		" "	3	X—
	254	Annie R. Carpenter	*S*		Hartford, Kans.	3	
	251	R. D. Carpenter	*S*		Hartford, Kans.	3	
O A	123	S. V. Carry	*S*		Eudora, Kans.	5	X—
A	127	Margaret Casey	*S*		Kansas City, Mo.	4	
A	616	" "	*S*	*(a)*	" " "	5	
O	288	Albert M. Casten	*S*		Quenemo, Kans.	1	—
O A	464	J. L. Cavner	*S*		" "	4	X—
A	649	Daisy E. Cayot	*S*		Kansas City, Ks. 1032 Minn. Ave.	8	
A	173	F. E. Cayot	*S*		Wellsville, Kans.	5	
O A	399	E. R. Cheney	*S*		Gypsum, Kans.	1	
O A	115	W. G. Cheney	*S*		Newton, Kans.	1	
O A	512	W. G. Cheney	*S*		Newton, Kans.	2	
A	10	W. R. Childs	*S*		Kansas City, Kans.	1	
O A	107	C. F. Claassen	*S*		Newton, Kansas	4	
O A	289	A. E. Clark	*S*		Ottawa, Kans.	5	
O	139	W. D. Clark	*S*		Paola, Kans.	3	X
	386	Lucile M. Clifford	*S*		Iola, Kans.	1	
A	469	Paul E. Coil	*S*		Mexico, Mo.	1	

[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

		Name.		Address.	No. of shares.
O	149	Charles B. D. Colver	*S*	Kinsley, Kans.	5×
A	151	William Connors	*S*	Topeka, Kans.	1
	353	Mazie Converse	*S*	Newton, Kans.	1
O A	427	H. H. Coombs	*S*	Pueblo, Colo.	5—
O A	426	H. H. Coombs	*S*	" "	5—
O A	432	John A. Cordts	*S*	Overbrook, Kans.	1×
O A	433	" " "	*S*	" "	1×
O	423	Geo. W. Cox	*S*	Overbrook, Kans.	2×
O A	316	A. B. Crabs	*S*	Arlington, Kans.	5×—
A	410	Robt. Craig	*S*	Osage City, Kans.	5
O A	199	M. P. Crisler	*S*	Attica, Kans.	1—
O A	8	B. S. Crockett	*S*	Denver, Colo.	1×—
A	152	Crosby Bros.	*S*	Topeka, Kans.	1
	32	F. C. Crowell	*S*	Atchison, Kans.	2
[*O A*	456	Chas. Cunliff		St. Louis, Mo.	5]* C 6/18-08
A	64	Charles Curtis	*S*	Topeka, Kans.	4
A	319	C. L. Davidson	*S*	Wichita, Kans.	7
O A	74	L. F. Davidson	*S*	Glasco, Kans.	4×—
A	340	Throck Morton Davidson	*S*	Wichita, Kans.	3
O A	200	A. F. Davis	*S*	Attica, Kans.	3
O	239	Clinton L. Davis	*S*	Harveyville, Kans.	5×
O A	503	Otis M. Davis	*S*	Parsons, Kans.	4×
O A	153	J. S. Dean	*S*	Marion, Kans.	2×
O	346	Joe Degen	*S*	Hoisington, Kans.	5×—

[*Matter enclosed in brackets erased in copy.]
[All letters and signs in italic added to the original list of names. See legend on page 282g.]

		Name.		Address.	No. of shares.
O A	203	J. A. De Moss	*S*	Thayer, Kans.	2X—
	355	Henry B. Denker	*S*	St. Charles, Mo.	2
	621	H. B. Denker	*S*	St. Charles, Mo.	1
O	539	Thos. F. Denman	*S*	Beaumont, Tex.	2X—
A	63	C. E. Denton	*S*	Attica, Kans.	4
O	534	A. F. Deruy	*S*	Pittsburg, Kans.	5
O A	68	T. E. Dittemore	*S*	Eureka, Kans.	1X—
O A	407	J. C. Dods	*S*	Cherryvale, Kans.	2—
[*A*		R. N. Dorr		City Hall, Wichita, Ks. B. O. 7	* Note unpaid.
O A	418	F. N. Drane	*S*	Corsicana, Tex.	5X
A	478	" " "	*S*	" "	4X
O A	204	Ed. C. Eagles	*S*	Thayer, Kans.	1—
O A	23	George J. Eckart	*S*	Lawrence, Ks.	1X—
O A	56	August Egle	*S*	Lexington, Mo.	3X
A	194	Garnett Elliott	*S*	Cunningham, Kans.	10
O	168	McClellan Elmore	*S*	@ Hoisington, Kans.	10
O A	90	J. E. Elwell	*S*	Ottawa, Kans.	5
	588	W. T. Embree	*S*	Pittsburg, Kans.	2
O A	28	E. A. Enright	*S*	Kans City, Ks. 306 Portsmouth Bldg.	1
	224	E. F. Eslinger	*S*	Kinsley, Kans.	4
	306	C. W. Esterly	*S*	Ottawa, Kans.	8
	462	" " "	*S*	" "	2
A	595	Earle W. Evans	*S*	Wichita, Kans.	1
	514	John C. Evans	*S*	Oklahoma City, Okla. 112 W. Grand Ave.	10

[*Matter enclosed in brackets erased in copy.]

[All letters and signs in italic added to the original list of names. See legend on page 282a.]

		Name.		Address.	No. of shares.
A	304	W. S. Fallis	*S*	Ottawa, Kans.	3
O A	85	J. C. Fear	*S*	Waverly, Kans.	6
O A	610	W. H. Fehrenkamp	*S*	Columbus, Tex.	2X—
O A	524	Henry Ficken	*S*	Concordia, Mo.	4—
O A	442	C. E. Finley & Co.	*S*	Pittsburg, Kans.	5
O A	297	Esther L. Fitzgerald	*S*	Waterville, Kans.	1X—
O A	282	F. E. Fitzgerald	*S*	Waterville, Kans.	3X—
A	162	Robt. M. Forbes	*S*	St. Louis, Mo.	10
A	570	T. Forbes	*S*	Sherman, Tex.	20
A	264	D. Forster	*S*	St. Louis, Mo.	10
	2	Robt. T. Fox	*S*	Hamilton, Ohio. #7 Dovana Apartments	1
O A	135	John W. Fristoe	*S*	St. Louis, Mo.	1—
O	143	John L. Fuller	*S*	Manhattan, Kans.	10X—
O A	91	Chas. C. Gardiner	*S*	Bradford, Kans.	10X
O A	651	C. C. Gardiner	*S*	" "	1X
O A	467	Lydia B. Gardiner	*S*	" "	10X
A	437	Mary Gerber	*S*	Sabetha, Kans.	2
	388	J. A. Gibson	*S*	Pittsburg, Kans.	2
O A	495	A. B. Gilbert	*S*	Newton, Kans.	10
O	51	A. T. Gille	*S*	Kansas City, Mo. 1053 St. Louis	1X—
O	52	H. S. Gille	*S*	" City, Mo. 1053 St. Louis	1X—
O	89	" " "	*S*	" " " " " "	1X—
O	88	Jas. M. Gille	*S*	" " " " " "	2X—
O A	5	Joseph B. Glynn	*S*	Herrington, Kans.	1—
	119	C. H. Goering	*S*	Moundridge, Kans.	5
	146	David J. Goering	*S*	Moundridge, Ks.	2

(All letters and signs in italic added to the original list of names. See legend on page 282e.)

		Name.		Address.	No. of shares.
	620	John C. Goering	*S*	Moundridge, Kans.	2
	122	Jas. C. Goering	*S*	" "	5
	114	R. A. Goerz	*S*	Newton, Kans.	2
O A	420	F. W. Goldschmidt	*S*	Kinsley, Kans.	2
A	411	John J. Goodwin	*S*	St. Louis, Mo.	1
A	412	" " "	*S*	" " "	1
A	413	" " "	*S*	" " "	1
O A	481	W. J. Gordon	*S*	Washington, Kans.	5X—
O A	222	Geo. S. Govier	*S*	Argentine, Kans.	2X—
O	60	Mabane M. Graves	*S*	Houston, Tex.	2—
O A	67½	Dr. D. E. Green	*S*	Pleasanton, Kans.	1X—
O A	70½	" " " "	*S*	" "	1X—
O A	71½	" " " "	*S*	" "	1X—
O A	270	" " " "		" "	1X—
O A	271	" " " "		" "	1X—
O A	272	" " " "	*S*	" "	1X—
O A	273	" " " "		" "	1X—
O A	274	" " " "		" "	1X—
O A	81	" " " "	*S*	" "	2X—
A	390	R. J. Green	*S*	Trenton, Mo.	1
A	82	E. A. Greiner	*S*	Waverly, Kans.	1—
O A	402	Dr. A. C. Griffith	*S*	Canton, Kans.	1—
O A	405	" " " "	*S*	" "	1—
O A	404	" " " "	*S*	" "	1—
O A	405	" " " "	*S*	" "	1—
O	118	W. E. Grove	*S*	Newton, Kans.	2
O A	41	W. T. Grove	*S*	Eureka, Kans.	10X—

[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

		Name.		Address.	No. of shares.
	1—533	E. J. Grovier	*S*	Hoisington, Kans.	2
A O	471	Burton G. Hall	*S*	Lincoln, Kans.	5—
O A	131	Harry D. Hall	*S*	" "	1
A	170	J. B. Hall, Gen. Del.	*S*	[Olmite, Tex.]* Denver, Colo.	10
A	362	Jean G. Hall	*S*	Waterville, Kans.	1—
O A	473	Pauline Hall	*S*	Lincoln, Kans.	1
O A	472	Robt. H. Hall	*S*	Lincoln, Kans.	1
O A	6	W. C. Hall	*S*	Coffeyville, Kans.	10
A	638	J. D. Hardwick	*S*	Charleston, Mo.	1
A	332	Wm. Hart	*S*	Norton, Kans.	10
O A	541	F. P. Hatfield	*S*	Grenola, Kans.	2X—
A	440	M. L. Haworth	*S*	Belle Plain, Kans.	1
A	363	R. Sam Hays	*S*	Sweet Springs Mo.	1
U	186	Wm. B. Hazen	*S*	Le Roy, Kans.	10—
A	499	Delila P. Hecox	*S*	Topeka, Kans. 934 Kans. Ave.	5
A	537	" " "	*S*	" " " " "	5
O A	428	J. R. Hedrick	*S*	Paola, Kans.	2—
O	269	D. C. Heflebower	*S*	Bucyrus, Kans.	1X—
Cancelled 2/27/08	[*A*	292 J. C. Heller	*S*	Coffeyville, Kans.	5]* C
O A	236	W. M. Hemphill	*S*	Weatherford, Tex.	5—
A	441	B. P. Hareford	*S*	Richhill, Mo.	3
A	303	C. T. Herring	*S*	Tascosa, Tex.	10
	266	A. Hess	*S*	Wichita, Kans.	1
A	37	E. J. Hess	*S*	Coffeyville, Kans.	10
O A	438	Roy Hesseltine	*S*	Sabetha, Kans.	5—
A	587	Chester A. Hiatt	*S*	Blue Mount, Kans.	1

[*Matter enclosed in brackets erased in copy.]
[All letters and signs in italic added to the original list of names. See footnote on page 282g.]

		Name.		Address.	No. of shares.
O A	233	J. L. Hill	*S*	Weatherford, Tex.	10×
O A	234	J. L. Hill	*S*	" "	10×
	276	O. G. Hinshaw	*S*	Sylvia, Kans.	5
	517	W. H. Hinshaw	*S*	" "	5
A	45	E. W. Hoch	*S*	Topeka, Kans.	1
A	171	L. A. Hofmann	*S*	St. Louis, Mo.	10
	26	John W. Hogan	*S*	Turtle Lake, Wis.	1
O A	105	N. A. Hohn	*S*	Marysville, Kans.	5×—
O A	108	P. M. Hoisington	*S*	Newton, Kans.	2—
O A	257	A. C. Hoke	*S*	Parsons, Kans.	1
O A	9	David Hopkins	*S*	Denver, Colo.	1×
	474	Milton J. Hopkins	*S*	St. Louis, Mo., 310 Opera House Blk.	2
O A	520	C. A. Hopper	*S*	Pratt, Kans.	1—
O A	121	L. C. Horst	*S*	Newton, Kans.	2
	586	Wm. — Houston	*S*	Blue Mound, Kans.	1
O A	235	D. M. Howard	*S*	Mineral Wells, Tex.	5×—
O A	298	Lillian M. Hoyt & Mary A. West	*S*	Salina, Kans.	5—
A	492	Arch W. Hubbard	*S*	Reading, Kans.	5×
O A	160	Kate H. Hull	*S*	Pittsburg, Kans.	5
A	48	S. H. Hunt	*S*	Wellsville, Kans.	5
	590	Jas. E. Hunter	*S*	Lincoln, Kans.	1
O	191	Frank S. Hurd	*S*	Broken Arrow, I. T.	2
A	341	L. T. Hussey	*S*	Lyndon, Kans.	2

[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

		Name.			Address.	No. of shares.
O A	192	Joseph Imthrum	*S*		Hilltop, Kans.	2
O A	500	Chas. R. Ingraham	*S*		Manhattan, Kans.	10×
O A	507	W. R. Ireland	*S*		Holton, Kans.	1×—
O A	508	W. R. Ireland	*S*		" "	4×—
O A	342	L. C. Jackson	*S*		Wichita, Kans.	1—
A	339	Henry P. Jacques	*S*		St. Louis, Mo.	1
O A	148	Nills W. Jacobs	*S*		St. Louis, Mo.	1×
A	87	Arthur L. Jelly	*S*		Kansas City, Mo.	1
O	255	Frederic C. Johnson	*S*		Kansas City, Mo.	10
A	154	W. A. Johnston	*S*		Topeka, Kans.	1
A	78	Clay Jones	*S*		Houston, Tex.	1
A	516	Clay Jones	*S*		Houston, Tex.	1
	490	Joseph W. Jones	*S*		Reading, Kans.	1
A	302	Louis W. Jones	*S*		Foster, Mo.	5
A	232	Morton Jourdan	*S*		St. Louis, Mo. Security Bldg.	1
A	596	S. W. Jurden	*S*	@	Wellston, Mo.	5
A	597	" " "	*S*	@	" "	5
[*O*	497	E. L. Kalbfleisch			Newton, Kans. 2]* C	6/18-08
	22	Amelia S. Kappler	*S*		Denver, Colo. Hotel Metropole	1
	21	Otto Kappler	*S*		" " " "	1
O	106	F. D. Kaufman	*S*		Newton, Kans.	2
A	416	John T. Kennedy	*S*		Blue Mound, Kans.	1
A	585	Dr. J. T. Kennedy	*S*		Blue Mound, Kans.	1
A	320	S. B. Kerran	*S*		Wichita, Kans.	1
O A	445	A. Kersley	*S*		Louisburg, Kans.	10×—

[*Matter enclosed in brackets erased in copy.]
[All letters and signs in italic added to the original list of names. See legend on page 2820.]

		Name.			Address.	No. of shares.
O A	645	A. Kersley	*S*	@	Louisburg, Kans.	2×
	392	Wm. Kesl	*S*		Cuba, Kans.	1
	391	John Kesl	*S*		Cuba, Kans.	1
O A	455	James N. Ketcheraid	*S*		Hope, Kans.	10—
A	47	George Kibler	*S*		Wellsville, Kans.	1
A	364	Louis King	*S*		Sweet Springs, Mo.	2
O A	17	W. M. Kinnison	*S*		Garden City, Kans.	5
A	321	N. E. Kirk	*S*		Wichita, Kans.	1
O	477	Chas. H. Klusmire	*S*		Holton, Kans.	5×—
O	509	" " "	*S*		" "	5×—
A	650	Knowles & Onstad	*S*		Houston, Tex.	2
O A	101	A. W. Knowles	*S*		Topeka, Kans.	1×—
O	347	Robt. L. Koch	*S*		Hoisington, Kans.	2½—
O	348	S. L. Koch	*S*		Hoisington, Kans.	2½
A	366	Ernest Albert Koerner	*S*		St. Louis, Mo., 408 Washington	10
	241	E. J. Krause	*S*		St. Louis, Mo., Willis Coal Co.	1
	242	G. H. Krause	*S*		St. Louis, Mo.	1
A	212	Geo. Krauss	*S*		Topeka, Kans.	1
A	212½	Leopold Karuss	*S*		Topeka, Kans.	1
A	311	Chas. E. Krebs	*S*		East Orange, N. J.	1
A	389	Emma Kumpf	*S*		Kansas City, Mo.	4
A	376	H. C. Kumpf	*S*		Kansas City, Mo.	1
A	377	Geo. J. Kumpf	*S*		Kansas City, Mo.	1
A	381	" "	*S*		" " "	10
A	378	Helen E. J. Kumpf	*S*		" " "	1
A	379	Lena V. Kumpf	*S*		" " "	3

[All letters and signs in italic added to the original list of names. See legend on page 282a.]

EXHIBIT "44."—*Continued.*

		Name.		Address.	No. of shares.
	669	J. T. Lafferty	*S*	Winfield, Kans.	3—
A	358	C. F. Lamb	*S*	Ottawa, Kans.	2
O A	182	John A. Lang	*S*	Wilson, Kans.	10×—
	277	F. D. Larabee	*S*	Stafford, Kans.	5
	278	F. S. Larabee	*S*	Stafford, Kans.	5
A	529	John C. Laning	*S*	Tonganoxie, Kans.	2
A	307	T. K. Lawrence	*S*	Ottawa, Kans.	3
A	485	C. H. Lee	*S*	Hillsdale, Kans.	1
O A	496	Clayton Lehman	*S*	Newton, Kans.	10
O A	129	Samuel Lehman	*S*	Newton, Kans.	10
O	185	Thos. E. Lewis	*S*	Lebo, Kans.	1×—
O A	439	J. C. Lichty	*S*	Sabetha, Kans.	2--
O	589	Lindburg & Rogers	*S*	Pittsburg, Kans.	5
	113	Jacob Linn	*S*	Halstead, Kans.	10
A	116	John H. Linn	*S*	" "	2
O A	657	Linton & Jones	*S*	Kansas City, Mo.	1×
	470	S. M. Locke	*S*	Mexico, Mo.	2
A	18	Chester I. Long	*S*	Medicine Lodge, Kans.	1
O A	97	Geo. H. Lotholz	*S*	Eudora, Kans.	5×—
O 187.50 *A*	124	A. Lotz, Jr.	*S*	" "	5×—
O A	155	A. T. Lucas	*S*	Topeka, Kans.	2
A	104	Simon Lybarger	*S*	Monrovia, Cali.	5
A	177	A. N. McBride	*S*	Attica, Kans.	1
O A	166	Ira J. McCalman	*S*	Piper, Kans.	2
O A	435	Edw. A. McClintock	*S*	Overbrook, Ks.	1
A	4	J. C. McClintock	*S*	Topeka, Ks.	1

		Name.		Address.	No. of shares.
O A	156	D. O. McCray	*S*	Topeka, Kans.	1—
	13	Wm. J. McDaniel	*S*	Springfield, Mo.	1
O A	165	J. G. McIntyre	*S*	Herington, Kans.	1—
O A	360	L. V. McKee	*S*	Frankfort, Kans.	5—
O A	527	Wm. P. McKelvy	*S*	Waterville, Kans.	10×—
A	370	B. F. McLean	*S*	Wichita, Kans.	10
O	80	E. H. Madison	*S*	Dodge City, Kans.	1—
O A	184	Homer E. Markham	*S*	Quenemo, Kans.	3×—
O A	451	O. G. Markham	*S*	Baldwin, Kans.	2—
O A	167	Henry G. Marquart	*S*	Lexington, Mo.	10×—
A	290	T. L. Marshall	*S*	Denver, Colo., 1629 Downing St.	2
A	293	T. L. Marshall	*S*	" " " "	2
A	294	" " "	*S*	" " " "	1
A	323	" " "	*S*	" " " "	2
A	324	" " "	*S*	" " " "	2
A	325	" " "	*S*	" " " "	1
O	453	P. S. Mason	*S*	Newkirk, Okla.	1—
O A	83	J. F. Mathis	*S*	Waverly, Kans.	10—
O A	84	W. H. Mathis	*S*	" "	5—
O	335	Chas. W. Meyer	*S*	Moscow Mills, Mo.	5×—
O A	446	L. J. Meyer	*S*	Holton, Kans.	5×
A	396	C. W. Miller	*S*	Gypsum, Kans.	10
O A	178	J. P. Miller	*S*	Ottawa, Kans.	5
	488	John R. Miller	*S*	Iola, Kans.	1
	489	" " "	*S*	" "	1
A	301	Wm. W. Miller	*S*	Osage City, Kans.	5
O A	157	Henry F. Millikan	*S*	Dodge City, Kans.	2×—
O A	584	John O. Mitchel	*S*	Tulsa, I. T.	10×

[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

		Name.			Address.	No. of shares.
A	49	S. D. Moherman	S		Wellsville, Kans.	10—
O	66½	James M. Moore	S		Madison, Kans.	1×—
A	463	Evan J. Morgan	S		Osage City, Kans.	5
O	525	E. P. Moriarty	S		Kansas City, Mo.	5×
O A	25	Robert M. Morrison	S		Lawrence, Kans.	1×—
O A	349	T. C. Morrison	S		Hoisington, Kans.	1×—
	31	J. C. O. Morse	S		Hutchinson, Kans.	1
A	365	Chas. G. Mulligan	S		St. Louis, Mo.	10
O A	43	Jno. R. Mulvane	S		Topeka, Kans.	10×—
O A	253	E. R. Nichols	S		Manhattan, Kans.	5×—
O A	117	J. C. Nicholson	S		Newton, Kans.	1
	120	C. T. Nissen	S		Newton, Kans.	2
O A	73	L. Neel	S		Glasco, Kans.	4
A	195	S. W. Nossaman	S		Cunningham, Kans.	10
A	164	J. W. O'Bryon	S		Lawrence, Kans.	2×
O A	482	John R. Offutt	S		St. Joseph, Mo.	6×
O A	483	" " "	S		" " "	4×
[O	193	R. L. Orcutt	S	@	St. Louis, Mo.	10×]* Cancelled.
O A	33	Casper Orf	S		Pierceville, Kans.	1×—
O A	34	Simon Orf	S		Pierceville, Kans.	1×—
O	523	[523]* E. M. Paddleford	S		Lenexa, Kans.	2—
O A	[531	E. F. Parker			Paola, Kans.	5]* C 6/18-08
A	655	E. M. Parrish	S	@	Houston, Tex.	1
	249	H. A. Parkerson	S		Manhattan, Kans.	5
O	217	M. A. E. Patton	S		Coffeyville, Kans.	10
O A	504	O. H. Peck	S		Parsons, Kans.	6×
A	291	F. B. Peck	S		Ottawa, Kans.	2

[*Matter enclosed in brackets erased in copy.]

		Name.		Address.	No. of shares.
A	548	F. B. Peck	*S*	Ottawa, Kans.	3
A	476	Edward T. Pendleton	*S*	Wellsville, Kans.	5—
U A	77	Gertrude Pendleton	*S*	Kansas City, Mo.	1—
	359	Elinor C. Piersol	*S*	Ottawa, Kans.	2
O A	126	Molvia E. Pilla	*S*	Eudora, Kans.	3×—
O A	475	" " "	*S*	" "	3×—
A	62	John C. Pollock	*S*	Topeka, Kans.	4
O	356	M. C. Porter	*S*	Clay Center, Kans.	2
A	296	Fred L. Pothast	*S*	Pickrell, Nebr.	2
O	7	P. J. Pothuisje	*S*	Denver, Colo.	1×—
A	317	Martin H. Potter	*S*	Turon, Kans.	2—
O A	14	Lydia V. Powell	*S*	Kansas City, Ks., 746 Washington	1
O A	262	Mrs. S. E. Powell	*S*	Waterville, Kans.	1×—
A	128	S. M. Powell	*S*	Coffeyville, Kans.	10
O A	263	S. T. Powell	*S*	Waterville, Ks.	4×
	20	A. H. Prater	*S*	Council Grove, Ks.	1
	393	" " "	*S*	" " "	2
O A	40	Richard Protheroe	*S*	Lebo, Kans.	10×—
O A	95	Jno. Purcell	*S*	Topeka, Kans.	2×—
	29	J. W. Radford	*S*	Kansas City, Ks.	1
O A	484	Byron Raplee	*S*	Washington, Ks.	5×—
O A	69	J. P. Raymond	*S*	Kansas City, Mo.	4×
A	36	E. S. Rea	*S*	Coffeyville, Ks.	10×
O A	583	F. A. Rea	*S*	Marshall, Mo.	10×
O A	15	P. H. Rea	*S*	Marshall, Mo.	10×—
O A	394	P. C. Reed	*S*	Reading, Ks.	2×—

[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

EXHIBIT "44."—*Continued.*

		Name.		Address.	No. of shares.
A	109	J. G. Regier	*S*	Newton, Ks.	2
A	76	G. A. Remley	*S*	Kansas City, Mo.	1
O A	35	L. Reynolds	*S*	Horton, Ks.	1
O A	216	C. E. Rhodes	*S*	Ramona, Ks.	1×—
A	331	Sara Rindskoft	*S*	Vincennes, Ind.	5
A	502	Lydia M. Roberts	*S*	Clinton, Mo.	1
O	468	M. A. Roberts	*S*	Osawatomie, Ks.	10×—
A	406	Dr. Turner F. Roberts	*S*	Paris, Tex.	2
	449	James L. Rogers	*S*	Pittsburg, Ks.	5
	527½	" " "	*S ? @*	" "	2
	225	J. N. Rose	*S*	Stafford, Ks.	1
	389	J. N. Rose	*S*	" "	1
O A	422	H. R. Ross	*S*	St. John, Ks.	2—
A	53	Louis Rothschild	*S*	Kansas City, Mo.	1
	187	Drury B. Rowe	*S*	Le Roy, Kans.	2
	367	Joseph Rowell	*S*	Holden, Mo.	2
A	313	T. C. Salveter	*S*	St. Charles, Mo.	2
A	609	A. F. Schaub	*S*	St. Louis, Mo.	1
O	159	E. B. Schermerhorn	*S*	Galena, Ks.	2
A	55	H. F. Schmelzer	*S*	Kansas City, Mo.	2
A	136	H. O. Schneider	*S*	Houston, Tex.	1
A	414	Henry Schnitzler	*S*	Wichita, Kans.	2
O A	176	F. S. Schoenleber	*S*	Manhattan, Ks.	10—
A	3	A. Schooley	*S*	Kansas City, Mo.	1—
? [*O A*	593	Arthur Schooley		" " "	4]*C
O A	401	Jos. A. Schrey	*S*	Pratt, Ks.	1—

[*Matter enclosed in brackets erased in copy.]

[*Matter enclosed in brackets erased in copy.]

282*s*

		Name.		Address.	No. of shares.
O A	133	Wm. Schwartz	*S*	Paola, Kans.	10×—
? [*O A*	384	S. P. Scott	*S*	Herington, Ks.	1]*C
A	259	Wm. S. Scott	*S*	St. Louis, Mo.	1
O A	181	A. H. Seelye	*S*	Abilene, Ks.	10—
	305	D. F. Seevers	*S*	Ottawa, Kans.	3
	466	" " "	*S*	" "	7
O 140 *A*	140 in	D. O. Sellers	*S*	Paola, Ks.	5×
? [*A*	429	" " "		" "	×5]* Not Pd.
	258	Cleveland Sewell	*S*	Houston, Tex.	2
A	350	W. F. Shaner	*S*	Ottawa, Ks.	4
O A	415	L. W. Shannon	*S*	Hiawatha, Kans.	6×
O	197	L. W. Shannon	*S*	Hiawatha, Ks.	4×
O A	491	L. B. Sheldon	*S*	Reading, Kans.	2×—
O A	218	W. H. Sharard	*S*	Coffeyville, Ks.	2
	96	**A. P. Sherman**	*S*	Kansas City, Mo.	10
A	385	Millard F. Sickly	*S*	Iola, Ks.	4
O A	309	S. H. Simpson	*S*	Columbus, Tex.	2×
A	314	Albert H. Sisson	*S*	St. Louis, Mo.	1
O A	205	W. H. Slaughter	*S*	Thayer, Kans.	3
A	50	C. A. Smith	*S*	Wellsville, Ks.	10—
	223	H. J. Smith	*S*	Argentine, Kans.	5
A	329	W. D. Smith	*S*	Osage City, Ks.	5
O A	219	Dr. A. K. Smolt	*S*	Newton, Ks.	5
O A	540	" " " "	*S*	" "	5
A	461	Wm. M. Staley	*S*	Ottawa, Kans. P. O. Rantoul, Ks.	3
O A	479	Loren A. Stall	*S*	Thayer, Ks.	2

[*Matter enclosed in brackets erased in copy.]
[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

		Name.			Address.	No. of shares.
	454	Geo. L. Stanley	S		Ponca City, Okla.	1
O	295	C. C. Starr	S		Topeka, Ks.	1X—
					262.50	
O A	644	C. C. Starr	S		Topeka, Ks.	2X—
O	79	" " "	S		" "	4X—
O	629	J. N. Starr	S		Attica, Ohio	1—
O	647	" " "	S		" "	1—
A	535	C. F. Stehwein	S		Bushton, Ks.	4
O A	444	Chas. E. Stephens	S		Baldwin, Ks.	5
O A	526	Geo. Stevenson, Jr.	S		Waterville, Ks. 6	6X—
		[" " "			" "	10]*
		[" " "			" "	10]*
O A	245	Isla M. Stevenson	S		Waterville, Ks.	1—
O A	246	Mollie R. Stevenson	S		Waterville, Ks.	1—
A	522	Lewis J. Stevison	S		Webb City, Mo.	10
O	144	Mrs. Hanna Stewart	S		Hiawatha, Ks.	2
O A	546	J. W. B. Stewart	S		St. John, N. B.	3
O A	201	Jesse L. Stoner	S		Lincoln, Kas.	10—
O A	622	Jesse L. Stoner	S	@	Lincoln, Kans.	6
A	38	John L. Stratton	S		Ottawa, Ks.	1
O A	138	Ross Stratton	S	@	Winfield, Ks.	2X—
O A	86	E. Marguerite Strauchon	S		St. John, N. B.	1
O A	237	Mrs. Westra B. Stewart	S		" " " "	1
O A	545	Wm. Strauchon	S		Kansas City, Mo., 17 Orange St.	5
O A	630	" "	S		" " "	5
O A	631	" "	S		" " "	1
O A	261	H. G. Strohm	S		Waterville, Ks.	2X—
A	493	Wm. I. Stuart	S		Troy, Ks.	5

		Name.			Address.	No. of shares.
O A	226	H. E. Suderman	*S*		Newton, Ks.	1
O A	110	S. M. Swartz	*S*		" "	5
O A	71	Paul B. Sweet	*S*		Topeka, Ks.	2×
O A	518	Mrs. Sussie B. Sweet	*S*		" "	10×
O A	44	Timothy B. Sweet	*S*		" "	10×—
A	281	W. G. Swenson	*S*		Abilene, Tex.	2
	134	Meier Swope	*S*		St. Louis, Mo.	2
A	190	Jno. Taggart	*S*		White City, Ks.	2
O A	244	Mary A. Talbot	*S*		Waterville, Ks.	2×
O A	247	Wm. E. Talbot	*S*		" "	10×—
A	543	R. L. Taylor	*S*		Wichita, Ks.	2
A	375	Geo. Theis, Jr.	*S*		" "	2
O A	354	Frank Thomann	*S*		Summerfield, Ks.	2—
O A	243	Chester Thomas	*S*		Waterville, Ks.	10×—
O A	623	" "	*S*		" "	10×—
O A	634	" "	*S*		" "	10×—
A	653	Mary Kate Thomas	*S*	*a*	Holyrood, Ks.	4
	646	Emmett V. Thompson	*S*		St. Louis, Mo.	2
A	654	E. V. Thomson	*S*		" " "	2
	279	R. S. Thompson	*S*		Stafford, Ks.	2
O	100	Edgar R. Thorpe	*S*	*a*	Lakin, Ks.	10

[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

EXHIBIT "44."—*Continued.*

		Name.			Address.	No. of shares.
O	93	H. J. Thorstenberg.....	*S*		Lindsborg, Ks.	1
[?*O*	323	" " "	*S*		" "	4×C]* 9/23/08.
O A	398	A. M. Tinkler.....	*S*		Gypsum, Ks.	2
O A	400	T. H. Tinkler.....	*S*		" "	10—
O A	637	" " "	*S*		" "	2—
O A	72	D. W. Travis.....	*S*	@	Topeka, Ks.	1×—
O A	42	Eliza L. Traylor.....	*S*		Lebo, Ks.	5×—
O A	265	Mrs. Mary E. Trout.....	*S*		Waterville, Ks.	10×—
O A	150	Myron C. Tubbs.....	*S*	@	Kinsley, Ks.	10×—

[*Matter enclosed in brackets erased in copy.]
[All letters and signs in italic added to the original list of names. See legend on page 282a.]

			Name.		Address.	No. of shares.
	O A	39	A. G. Tuller	*S*	Lebo, Ks.	2×—
	O	443	Chas. F. Turner	*S*	Mulvane, Ks.	5
		480	S. A. Turner	*S*	Cherryvale, Ks.	5
	A	147	Clinton E. Udell	*S*	St. Louis, Mo.	1
	O A	457	C. Wm. Van De Mark	*S*	Clyde, Ks.	7×—
	O A	632	" " " " "	*S*	" "	5×—
	A	506	E. C. Van Ness	*S*	Waverly, Ks.	2
	A	592	Nicholas M. Vilm	*S*	Billings, Mont.	10
536 ?		530	Wm. Volkland	*S*	Bushton, Ks.	2
	A	238	T. P. Walton	*S*	Harveyville, Ks.	2
	O A	202	Charlie W. Watson	*S*	Lincoln, Ks.	2
	O A	430	C. G. Weaver	*S*	Louisburg, Ks.	5×
	O A	431	P. J. Weaver	*S*	Louisburg, Ks.	5×—
	O A	486	" " "	*S*	" "	5×—
	A	267	E. Webb	*S*	Wichita, Ks.	1
	A	371	E. "	*S*	" "	2
O [?589]*	*A*	580	W. F. Weis	*S*	Lexington, Mo.	3×—
	A	213	Cora J. Wells	*S*	Eureka, Ks.	1
	A	459	E. L. Wettstein	*S*	Trenton, Mo.	1
	A	132	John Whalen	*S*	Lincoln, Ks.	1
	O	145	E. C. Wheelock	*S*	Hiawatha, Ks.	1×—
	O	198	" " "	*S*	" "	1×—
	A	67	Whitcomb Cabinet Co.	*S*	Kansas City, Mo.	3
	A	300	Joseph M. White	*S*	Osage City, Ks.	10
		280	John A. Whitehurst	*S*	Sylvia, Ks.	1
	O A	326	H. H. Wiggins	*S*	Quenemo, Ks.	10×—
	A	172	C. R. Wilkins	*S*	Wellsville, Ks.	1

[*Matter enclosed in brackets erased in copy.]

[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

EXHIBIT "44."—*Continued.*

		Name.		Address.	No. of shares.
O A	92	Julius T. Willard	*S*	Manhattan, Ks.	1×—
O	315	H. H. Wilmes	*S*	St. Charles, Mo.	2—
O A	231	Andra E. Wiser	*S*	Chelsea, I. T.	10
O A	230	Clinton B. Wiser	*S*	" " "	10
O A	579	Geo. H. Wittenbrug	*S*	Lexington, Mo.	1√—
O A	65	F. E. Wolf	*S*	Baldwin, Kans.	2
O A	330	P. R. Wolfe	*S*	Frankford, Ks.	5
O	447	F. T. Woodburn	*S*	Holton, Ks.	2×
A	343	D. P. Woods	*S*	Wichita, Ks.	1
Part of *O*	183	Hary Work	*S*	Ellsworth, Ks.	7—
" "	183	" "	*S*	" "	3—
O	619	Emma Wuttke	*S*	Sumner, Ia.	1×—
	581	Houston Wyeth	*S*	St. Joseph, Mo.	50—
O A	448	C. W. Zimmerman	*S*	Holton, Ks.	5×
A	260	Geo. L. Zollmann	*S*	St. Louis, Mo.	2

[All letters and signs in italic added to the original list of names. See legend on page 282*a*.]

(Deruy) A. F. Deruy	$750.00×
Cleveland Sewall	300.00
W. T. Grove	1,500.00×
Louisa Dittemore	150.00×
(Should be T. E. Dittemore, Eureka, Kansas.)	
Robert H. Forbes	1,500.00
H. C. Bowman	300.00
George J. Kumpf	750.00
George Kumpf	1,500.00
Lena V. Kumpf	450.00
Henry C. Kumpf	150.00
Helen E. J. Kumpf	150.00
J. A. Schrey×	150.00×
Joseph Inthrum×	300.00×
F. L. Pothast	300.00
J. C. Fear×	900.00×
J. F. Mathis×	1,500.00×
W. H. Mathis×	750.00×
Ray Taylor	300.00
S. N. Bridgeman	300.00
B. F. McLean	1,500.00
S. B. Amidon	750.00
Gertrude Pendleton	150.00
William Austin	300.00
W. P. Burrows	300.00
C. G. Hinshaw	750.00
R. S. Thompson	300.00
E. G. Van Ness	300.00
T. P. Walton	300.00
Cora Wells	150.00
J. T. Lafferty	450.00
H. J. Smith	750.00
C. R. Wilkins	150.00
R. T. Pendleton	750.00
S. E. Hunt	150.00
F. E. Cayot	750.00
John C. Nicholson, Cert. endorsed	150.00—
S. Lehman, Cert. not endorsed	1,500.00A—
C. Lehman	1,500.00×
C. F. Classen, Cert. endorsed	600.00—
A. B. Gilbert, Cert. endorsed	1,500.00—
W. E. Grove, Cert. endorsed	300.00—
G. E. Finley	750.00×
H. H. Wiggans	1,500.00×
C. L. Davis	750.00×
A. E. Smolt, Cert. not endorsed	1,500.00—
W. G. Cheney, Cert. not endorsed	450.00A—
L. C. Horst, Cert. not endorsed	300.00—
S. M. Swartz, Cert. not endorsed	750.00—
H. E. Suderman, Cert. endorsed	150.00A—
P. M. Hoisington, Cert. endorsed	300.00—
F. D. Kaufman, Cert. endorsed	300.00—

List of Annuity Certificate Holders.—Continued.

W. H. Hinshaw	750.00
William W. Miller	750.00
W. D. Smith	750.00
John Whitehurst	150.00
Arthur Capper	300.00
Charles Curtis	600.00
James Ball	150.00
I. W. Baughman	750.00
Fred Bonebrake	600.00
E. R. Bolton	2,250.00
Mrs. Flora Cameron	2,250.00
W. W. Cameron	2,250.00
R. D. Carpenter	450.00
Annie R. Carpenter	450.00
Paul E. Coil	150.00
Robert Craig	750.00
Garnett Elliott	1,500.00
W. T. Embree	300.00
Mary Cerber	300.00
John C. Goering	300.00
Joseph G. Goering	750.00
C. H. Goering	750.00
R. A. Goerz	300.00
William Hart	1,500.00
C. E. Stephens	750.00×
Farly Cardern	750.00×
F. S. Hurd	300.00×
E. W. Hoch	150.00
H. J. Bone	150.00
Daisy E. Cayot	1,200.00
William Kesl	150.00
John Kesl	150.00
E. H. Wittstein	150.00
John H. Linn	300.00
Henry Schnitzler	300.00
Franklin Adams	150.00

L. T. Hussey	300.00
E. J. Krause	150.00
C. H. Krause	150.00
Louis W. Jones	750.00
B. S. Larrabee	750.00
F. D. Larrabee	750.00
C. H. Lee	150.00
Evan J. Morgan	750.00
C. T. Nisson	300.00
S. W. Nassaman	1,500.00
J. G. Regier	300.00
J. N. Rose	300.00
Joseph Rowell	300.00
A. F. Schaub	150.00

Code for Check Marks.

×Cert. in and full release & surrender signed by holder.
—Cert. in but no release signed.

A Amendment signed and attached to Cert. re "from Earning of Co. etc."

The Endorsements of Certificate where marked are absolute assignments to either Receiver or Blank and are "for value received."

Names not checked are Am. Cert. holders and have not previously surrendered their rights.

G.

12/11-'15.

284 ADRIAN F. SHERMAN, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Landon:

Q. You are familiar with this matter, are you not?

A. Yes, sir.

Q. Assignments and so on?

A. Yes, sir.

Q. Any of these parties who now appear in this case, that is, the various counts that are now before the court, did you have their assignment or certificate or represent them in any way during the proceedings in the Federal Court in 1908?

A. I did not.

Q. Whom did you represent in the proceedings in the Federal Court?

A. I represented myself and I represented Mr. Schooley. I was under the impression I filed an intervening petition for someone else. All those I did represent I filed whatever I thought necessary to protect them.

Q. These parties now in issue in this case on the various counts before the court, those matters come into your possession along in 1912 and afterwards?

A. Well, I don't remember the exact date, some time after that.

Q. This decree recites you appeared in the court there representing yourself and certain other certificate holders. Who were those other certificate holders, if any?

A. Only those for whom I had filed some pleading.

Q. Mr. Schooley?

A. Yes, sir; and I think someone else, I am not real sure at this time.

Q. Just two of them, were there not?

A. That is my best recollection now. There were not any of them as far as I know, that were similarly situated as I was. My intervening petition—has that been introduced in evidence?

Mr. Cooper: Yes.

A. Was a petition filed by myself alleging that at the time I purchased the certificate I was told that there would only be the one issue of certificates, amounting to a total of seventy-five thousand dollars. Well, I learned along in December that they had been issuing other series up to approximately three hundred thousand dollars, and I had given my note for twelve hundred and fifty dollars and fifteen hundred dollars, so I refused to pay my note, and at the time of the receivership the note was still in the hands of the company and I filed an intervening petition asking that the note be cancelled and returned to me.

Mr. Cooper: That was done, wasn't it?

A. It was never returned. The order was made. I still have the certificate and I don't know where the note is.

By Mr. Cooper:

Q. You never paid it?

A. I never paid it; no, sir.

Q. You invoked the protection of that decree on your note as a defense to the note?

A. I never had to.

Q. You would, as a matter of fact, however, you took under the decree?

A. I would if it come up, in all probability.

285 Q. You were frequently in court while the proceeding was going on?

A. Yes, sir; I kept very closely in touch with it.

By Mr. Landon:

Q. Do you know when the matter of the merger of the two companies was being discussed before the insurance commissioner or here in Kansas City?

A. Yes, sir.

Q. Were you present at any of the meetings at which the merger was discussed?

A. Yes, sir.

Q. And who was present there?

A. Well, there were a great many people present.

Q. I mean as representing the International and the Great Western?

A. I saw something in the paper awhile ago that showed who were there. The appearances were numerous. Mr. Cooper was there, Mr. Piatt, Mr. Atwood, Judge Thomson, myself—there must have been nearly a dozen lawyers there.

Q. Now, at that time what, if anything, was done by you or Mr. Atwood with reference to making some provision for the annuity certificate holders, and before the merger?

A. Well, we objected to any consolidation or merger without some provision which would take care of whatever claims the outstanding annuity certificate holders might have, and several actions were brought to prevent the merger or consolidation. One was brought in the Federal Court. I am not certain whether one was brought in the state courts of Missouri or not, but there was one brought in Wyandotte County, Kansas, against the Insurance Commissioner of Kansas to prevent him from approving any merger until some provision was made.

Q. Then was it in pursuance to those objections that this provision with reference to the annuity certificate holders was incorporated in the contract?

A. That was the result and it is my understanding that that is what brought it about.

Q. Now, in these discussions was there any question raised by the International, or any one representing them, or the Great Western, that these annuity certificate holders outstanding had been can-

celled by the decree of Judge McPherson, or that they were barr by any statute of limitations?

A. Oh, I think all the defenses were spoken of. I don't know ju how they were presented or how they were urged, but those thin were discussed in discussing the validity of any claim there might outstanding.

Q. That is all.

Witness excused.

GEORGE STEVENSON, recalled as a witness on the part of the d fendant, testified further as follows:

Direct examination.

By Mr. Cooper:

Q. You have already testified and I want to ask you whethe you, as an investor in the stock of the Life Insurance Compan under this reorganization plan, relied upon the decree of the Fe eral Court with reference to the standing of the annuit 286 certificate holders who didn't come in and participate in th reorganization?

Mr. Landon: I object to that as not within the issues and no binding upon the parties here.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then an there at the time duly excepted and still excepts.

A. Well, the best evidence of that is I paid my assessment an took stock upon that basis, because I felt that that was the la chance that we would have.

Q. Had you been advised by anybody, or did you have a belie in your own mind, that that decree was not binding or that it wa binding?

A. That it was binding.

Q. And was it upon the basis of the legality of that decree, and it binding effect you made this investment you speak of?

Mr. Landon: Objected to as calling for his own opinion and con clusion.

The Court: That is just one step in the matter of course.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. Yes, sir.

Q. To your knowledge did any of the annuity certificate holder who did not participate, notify you or anyone who did participate that they would subsequently attack that decree?

Mr. Landon: I object to that, except as limited to himself.

Mr. Cooper: I say, to his knowledge anybody else.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. Not that I recall.

Q. Then is it a fact, that as far as your testimony goes, that nobody ever gave notice or made any claim to your knowledge—that is, none of these non-participating annuity certificate holders served any such notice or made any such claim that the decree was illegal and was not binding? The question is a little involved.

A. No, sir; other than Mr. Sherman met me one time and said he was going to stir something up.

Q. When was that?

A. Well, that was after the company was reorganized.

Q. After you were elected president?

A. Yes, sir.

Q. And after you had paid in your money?

A. Yes, sir.

Q. I will ask you, as a man connected actively with this reorganization, whether the participants in the reorganization did so in reliance upon the binding force and effect of the decree of the Federal Court?

Mr. Landon: I object to that as a matter not within his knowledge and calling for an opinion and not binding upon the parties in this case, and not within the issues.

By the Court:

Q. Did you have any meeting before your money was paid in?

A. Yes, sir; we had a meeting.

287 Q. Was this decree discussed at the meeting?

A. Well, the money had been paid in, practically, prior to the issuance of the decree, and we had had a meeting previous to that.

By Mr. Lyons:

Q. The decree had been outlined at the previous meeting of the court on August 15th?

A. Well, to this extent, we were given further time to raise more funds.

By Mr. Cooper:

Q. You promised to reorganize as you have stated there, and the money was paid in prior to the decree on that basis?

A. Yes, sir.

Q. Was it discussed at these meetings that those who didn't come in would be barred?

A. I don't recall as to that.

Q. Was it discussed as to what would happen to them, or what their status would be?

A. No, sir; I don't think it was, because we didn't know at that time. Of course, we felt very hopeful that we could complete the raising of the money after the first appearance before the Federal Court, and two extensions of time was given, that the company would be reorganized.

By Mr. Sherman:

Q. At the time you completed the reorganization there was quite a number of letters on file, were there not, with your committee, indicating they were not going to come in on the plan suggested?

A. Not that I recall.

Q. Wasn't that the purport of some of these letters Mr. Neel introduced in evidence?

A. I didn't see them, I don't know.

Q. To refresh your recollection about the talk with me. That happened on the street car, didn't it?

A. I think it did.

Q. And we had quite a little discussion about the whole matter of those annuity certificates?

A. Well, you made some contention along that line, I don't just remember what it was.

Q. As a matter of fact, didn't you say to me at that time it had always been a question in your mind about whether or not those certificates had been wiped out?

A. No, sir.

Q. You don't remember making that statement?

A. No, sir.

Q. Was Mr. Orr connected with the reorganization proposition?

A. Yes, sir.

Q. As attorney?

A. Finally, yes, sir; after we had had, I think, two meetings at Topeka, we secured his services.

Q. As a matter of fact, wasn't he the attorney for the company after the reorganization?

A. One of the attorneys, yes, sir; he and Judge Thomson.

Q. Didn't Judge Orr maintain the position——

A. (Interrupting.) For a time and then later on Judge Thomson was our sole attorney.

Q. Didn't Judge Orr always maintain the position that sooner or later you were going to hear from those outstanding annuity certificate holders?

A. Not that I recall.

Q. Of course, at the time this reorganization was completed and you were made president you knew the ones who had not

288 come in?

A. Well, no, sir. I didn't really know. I knew there were some that hadn't come in; I didn't know just who they were.

Q. The information was there at the office so that you could have ascertained?

A. Oh, yes.

By Mr. Hill:

Q. The insurance company never did pay any dividends to the annuity certificate holders after the reorganization?
A. No, sir.
Q. Did they set aside any fund or make any provision for that?
A. No, sir.

By Mr. Cooper:

Q. You didn't figure on them at all, as I understand it?
A. No, sir.

By Mr. Landon:

Q. And you didn't pay in your money in the reorganization plan, based on the theory that all annuity certificate holders were coming in, you didn't know whether they were or not, did you?
A. No, sir.

By the Court:

Q. They hadn't all told you they were coming in?
A. No, sir.
Q. That is all.

Witness excused.

Thereupon the court adjourned the further hearing of this cause until tomorrow, Saturday, the 19th day of January, 1918, at 9:30 o'clock a. m.

Saturday, January 19th, 1918—9:30 a. m.

On Saturday, the 19th day of January, 1918, at 9:30 a. m., the court resumed the hearing of this cause and further proceedings were had, as follows:

JAMES W. ORR, called as a witness on the part of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Cooper:

Q. Your name is James W. Orr?
A. Yes, sir.
Q. Where do you reside?
A. I reside at Topeka, Kansas.
Q. What is your occupation?
A. Lawyer.
Q. How many years have you been practicing law?
A. Thirty-five years.

Q. In 1908 what was your firm?
A. Waggoner, Orr & Challis.
Q. Mr. Bailey P. Waggoner?
A. Yes, sir.
Q. Mr. Orr, did you have any professional connection with the so-called reorganization of the Great Western Life Insurance Company of this city?
A. Well, yes, sir; I did.
Q. How did you became connected with it, and for whom?
A. I believe my recollection is that the receiver was appointed for the Great Western Agency Company in about March or April, or May, 1908, and afterwards was extended to include the Great
289 Western Life Insurance Company. I am not able to state exactly the dates, but I can approximately. The property of the Great Western Life Insurance Company was ordered sold by the Federal Court here, and the day before the sale was to take place I was employed to get a postponement of the sale, if I could, with a view to reorganization of the company and rehabilitation of it, and Judge Philips declined to postpone the sale, but gave me fifteen days, as I remember it, in which to file objections to the confirmation of the sale. It seems to me that this was along in July, 1908. Objections were filed to the confirmation of the sale and were taken up by Judge Smith McPherson, who was acting as judge here in the absence of Judge Philips, and from that time on until the Great Western Life Insurance Company was merged and consolidated with the International Life Insurance Company of St. Louis, I was connected with the affairs of the company.
Q. That is, after the rehabilitation of the company you represented it as its counsel?
A. Yes, sir. I also represented the objectors to the confirmation of the sale, and acted for the reorganization committee in the reorganization of the company.
Q. Now, who were those people? I don't mean the individuals but what was the connection they had with the Great Western Life Insurance Company? What was their interest in it?
A. Well, my recollection is that they were Great Western Agency stockholders, principally, and some of them were Great Western Life Insurance Company stockholders and some were annuity certificate holders.

Mr. Atwood: What parties are you speaking of—asking the witness about?
Mr. Cooper: I am referring to the ones he represented when he mentioned about objecting to the confirmation of the sale and handling the reorganization.

A. Well, there was a committee called, as I remember it, the reorganization committee, of which James Chappell was chairman, as I recall it. Mr. George Stevenson was also a member of the committee, and the treasurer of the State of Kansas——
Q. (Interrupting.) Mark Tully?

A. Mr. Mark Tully, was a member and there were other members, I could not name them all.

Q. You mentioned about representing stockholders of the Great Western Life Insurance Company. I would like to refresh your memory on that. Do you recall that the stock of the Great Western Life Insurance Company——

A. (Interrupting.) I didn't represent any stockholder of the Great Western Life Insurance Company, that stock was all held somewhere else.

Q. Nine hundred and ninety-two shares by the Agency Company and eight shares by individuals, according to the record.

A. Yes, sir.

Q. Do you recall the decree Judge McPherson rendered on August 27th, 1908?

290 A. I remember the fact of the decree being rendered about that time, and I could probably state the essence of it, but I doubt if I could recall the terms of it all.

Q. That is the decree that I called your attention to this morning?

A. Yes, sir.

Q. Dated August 27th, is the one.

A. Yes sir, I prepared that decree, with others.

Q. It is provided in the decree something about the plan of re-organization, and among the provisions are that annuity certificate holders pay in $37.50 for each annuity certificate share that they have; that is, twenty-five per cent of the face value or selling price, and Agency stockholders twenty-five per cent of the selling price of that Agency Company stock, and that Mr. Kemper was made trustee to receive that money?

A. Yes, sir.

Q. And then the money should be utilized in paying the debts of the company?

A. Yes, sir.

Q. And these Agency stockholders and annuity certificate holders would receive stock in the re-organized company, the same corporation, on the basis of two for one. That is, two hundred dollars per share. Do you recall that?

A. Yes, sir. The upset price for the stock was to be two hundred dollars per share, as I remember it.

Q. I am mentioning this to refresh your menory. I will ask you right here, have you given consideration to these matters in the last few years?

A. No, sir. I haven't thought about it.

Q. Until your attention was called to it last night by telephone?

A. Yes, sir.

Q. There is also a provision in the decree that such of the annuity certificate holders who do not participate in the re-organization would be barred from any claim after the lapse of thirty days?

A. Yes, sir.

Q. You recall that?

A. Yes, sir. I think the Great Western Agency stockholders had sixty days.

Q. Yes, that is correct. What is your recollection as to whether or not this one hundred and thirty thousand dollars had been paid in or not prior to the decree? The decree says one hundred and thirty thousand dollars was paid in.

A. Well, my recollection is that it had been, and it seems to me—if you will let me state that as I remember it——

Q. (Interrupting.) Go ahead.

A. The attorneys for the Receiver and the attorneys for others who were interested, contended it would be impossible for us, that we probably thought we could re-organize and rehabilitate the company, but it wasn't a possible thing to do, and that we were misled about it, and to satisfy that objection or contention I remember of presenting to Judge McPherson a cashier's check of the Commerce Trust Company for, it seems to me, it was one hundred and sixty-seven thousand dollars, may be it was one hundred and thirty-seven thousand dollars, but it was a very large sum, that had been paid in or was available for the purpose of paying off the debts of
291 this concern. And I was not so familiar with the details of who paid it in as I am of the fact that it was paid in or was available for that purpose, and I think it was paid in by those who had subscribed on the decree, or on the basis that the decree was afterwards formulated on.

Q. That is the plan of re-organization mentioned in the decree?

A. Yes, sir.

Q. Of course, paid in, you mean, to the re-organization committee and to Mr. Kemper as trustee?

A. Yes, sir; I think Mr. Kemper was the custodian, but it was the re-organization committee that had control of the funds.

Q. During that time, while this money was being collected, was any notice or information brought to your attention by the holders of any of the annuity certificates, that the plan which you had formulated was illegal and would be contested in the event it was consummated?

Mr. Landon: That is objected to for the reason it is incompetent and immaterial and not binding on any of the parties in issue here and not within the issues in this case.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. No, sir. I don't recall any objection or contention about the legality of the plan of re-organization, or to the correctness or binding force of the decree which in any manner related to these annuity certificates, until a long time after the decree was entered and the business was in the hands of the new directors and being conducted as a going concern.

Q. Was there any protest in court? Did anybody appear in court to protest or object to the plan—to this particular part of the decree

with reference to the barring of the annuity certificate holders, those who did not participate? Mr. Sherman or anybody else?

Mr. Thomson: I object to that as not competent, and not the best evidence.

The Court: Objection overruled.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. I don't recall any.

Q. You knew Mr. Adrian F. Sherman, didn't you?

A. Yes, sir.

Q. And he participated in the proceedings from time to time, did he not?

A. Yes, sir, he was in court and he was representing some,—as I recall it, some annuity certificate holders, but may be some stockholders, but my recollection is he was there representing some annuity certificate holders. Perhaps more than one, I don't know how many.

Mr. Landon: I move that that be stricken out as not the best evidence.

The Court: Motion overruled.

292 To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Q. Now, would your testimony with reference to no protest and objection being made by annuity certificate holders, apply as well to the stockholders of the Agency Company?

A. Yes, sir. I think the Agency Company was urging the reorganization on the plan that was adopted. I mean the stockholders of the Agency Company—some of them—most of them.

Q. While forming your plan of reorganization was consideration given to the question of the then value of the annuity certificates?

A. You mean the validity of them?

Q. Both the validity and the value.

A. There was a considerable discussion as to the validity of them. That is to say, the right of the company to issue them, and the contention was by some that it was not a part of the charter rights of the Insurance Company; that the issuance of these certificates was ultra vires, beyond the power of this company to do. I don't remember any question of their market value, or financial value, you mean?

Q. Actual value.

A. Actual value in dollars? I don't recall what about that. I do know that there was a change made in them some time before this litigation came about, which postponed any participation in profits or income from them, to that of profits of the business. I think the certificates, as I recall them, as originally prepared did not contain that, but afterwards there was some provision stamped on them, or on most of them, not all of them.

Q. That the money accruing thereunder should be paid out of the earnings?

A. Yes, sir, that was the effect of it, but the wording I don't recall.

Q. Mr. Orr, I haven't spoken to you about this—was your
nection with the situation such you became advised and formul
an opinion as to the actual value of the certificates at the
mentioned, that is, before the reorganization and before the dec
A. Yes, sir, I did look up that question some and I had disc
it with the court some and I was of the opinion, and still am,
they were ultra vires.

Mr. Landon: I move that that be stricken out as not binding
the parties to this suit in any way.
The Court: Objection sustained.

To which ruling and action of the court the defendant then
there at the time duly excepted and still excepts.

Q. What was your opinion as to the money value?
A. I don't think I had any opinion, I don't know.

Mr. Landon: I object to that for the same reasons.
The Court: Objection sustained.

To which ruling and action of the court the defendant then
there at the time duly excepted and still excepts.

A. I don't think I had any opinion as to its market value.
Q. Were you ever called upon at any time, either prior t
subsequent to the decree, to give advise and an opinion
293 respect to the legality and binding force of the decree, to
one who was interested in the subject-matter?

Mr. Thompson: I object to that unless confined to the people
are represented here by Mr. Sherman.
The Court: Objection sustained.

To which ruling and action of the court the defendant then
there at the time duly excepted and still excepts.

Q. Have you any knowledge as to the question whether or
the remarks of Judge McPherson were printed, and if so, whe
it was mailed out to the annuity certificate holders and Age
stockholders?
A. Yes, sir, I do know that the decree was printed in sor
pamphlet form and it seems to me also the remarks of the ju
were printed, which also were mailed out to various parties, I d
know who, all of them, but to those who were interested.

Mr. Landon: I object to that unless he knows of his own kn
edge, and move that the answer be stricken out.
The Court: Motion sustained.

To which ruling and action of the court the defendant then
there at the time duly excepted and still excepts.

A. I don't know who they were sent to. I just know they w
sent out.

Q. That is, you had no direct supervision in the sending of those?

A. No, sir, I had nothing to do with that further than I just knew of the fact they were being sent out.

(By Mr. Landon:)

Q. From what somebody told you?

A. No, sir, I was at the office when they were sending them out and knew of the fact when it occurred, but to whom they were sent or the names of any individuals to whom they were sent, I could not give—now, at least.

Q. As I understand you, Mr. Orr, your connection with this as counsel was you were in general charge of the reorganization plan?

A. Yes, sir.

Q. You were looking after it from the legal standpoint?

A. Yes, sir.

Q. From the time you have mentioned until the end?

A. Yes, sir.

Q. That is all.

Cross-examination.

By Mr. Thomson:

Q. Mr. Orr, you were one of the stockholders of the reorganized company, were you not?

A. I became one some time after the decree.

Q. Largely?

A. Yes, sir, I had considerable shares of stock afterwards.

Q. Were you one of the Agency stockholders?

A. No, sir.

Q. You had not been connected with that company before?

A. No, sir.

Q. When was it you got your stock?

294 A. Well, I got the stock at various times after the decree was entered, and I think I sold my interest in January, may be, or February, 1912, but the stock was accumulated at different times during a period of two or three years.

Q. Were you not a stockholder at the time of the consolidation with the International?

A. No, sir.

Q. You were not a director at that time?

A. I might have been a director.

Q. You could not be a director without having some stock, could you?

A. If I was a director I was one without having any stock. I don't recall whether I was a director or not. They might have left one share standing in my name to make me a director, but I had no financial interest in any of the stock.

Q. You were still general counsel of the company at that time?

A. Yes, sir. I can state it to you, if you like me to, how it happened.

Mr. Cooper: Just go ahead.

Mr. Landon: I don't see how it is material.

Q. Now then, during all the time you were general counsel of the Great Western Life Insurance Company was not the question coming up every now and then, among the officers of the company, as to the liability of the company on these annuity certificates, that hadn't participated personally in court?

A. I don't recall it coming up all the time. I do recall that it seems to me Mr. Sherman wrote a letter or visited the headquarters, stating that he had and was expecting to have more shares—well, these certificates, and was claiming the right—some right under them, but as far as I know the validity of these certificates was never admitted, and it was always contended that they were not valid. As I recall it, you entertained that opinion also. You were acting as general attorney for the company.

Q. Well, there was that kind of contention at times, was there not?

A. No, sir, at one time. I don't recall but once and that was with Mr. Sherman. That was long after the decree was entered and long after the company had been reorganized and was a going concern.

Q. After it was reorganized and a going concern?

A. Yes, sir.

Q. You think just now that I also entertained the same opinion?

A. This was my recollection and understanding of it.

Q. Don't you recollect the only time you and I had a conversation about that was in the office I was occupying there at the insurance company, and that I questioned at that time the right of the court to shut out those persons who did not have notice?

A. I don't recall any such attitude of yours on the subject.

Q. Don't you recollect there was a talk something along that line?

A. No, sir. If I am to depend on my present recollection I should say that you and I were in accord on that subject, that these certificates were illegally issued at the outset, and that, speaking from my own recollection, I should say we agreed also that the decree of the court was a bar and an estoppel to their right
295 to recover, because, as I remember it, they were all informed —not by summons or subpœna, but they were informed as to what was going on and we went on and closed it up and, as I remember it, Judge, we were in accord on the subject that if they ever were legal or binding or valid, that those who had failed to come in under the decree of the court had lost whatever rights they had. That is my recollection of it.

Q. Didn't you also speak about ultra vires, that the company could not claim that?

A. That the company, itself?

Q. That the company could not claim the benefit of ultra vires having received the consideration?

A. I don't recall discussing that. I don't have any such recol-

lection. I only recall the result of our conversation with Mr. Sherman, I think it was, who had represented one or more and was going to represent more than one of these certificates, and we discussed it, and my recollection is that we agreed if they ever had any rights they were vacated by this decree.

Q. That is, providing the court had jurisdiction?

A. I don't think there was any provision about it, I think that was the result of our conference.

Q. You spoke about being employed to appear there for the reorganization committee. Were you not employed by Mr. Stevenson and Mr. Chappell?

A. I think we were originally employed by F. M. Pearl and his associated, who lived at Hiawatha, Kansas. I think Mr. Chappell was with Mr. Pearl, perhaps, in our office. I know Mr. Pearl was there. You know him. There was several, I can't recall their names, but they represented themselves as having an interest in the Great Western Agency Company, which, as I recall it, owned all of the capital stock of the Great Western Life Insurance Company.

Q. And you were afterwards paid for those service, were you not?

A. Yes, sir, I carefully looked after that.

Q. By whom?

A. By different interests. The Great Western Life Insurance Company paid me for some services I rendered to that company, and the reorganization committee paid some—not a great deal.

Q. Wasn't it a lump sum on account of your services in regard to the reorganization?

A. I don't remember.

Q. You don't remember?

A. I don't recall, no, sir.

Q. At the time you were employed you were employed also to try to have that sale, made by the referee or master, wherein the Philadelphia Company and the Kansas City Life Insurance Company had made bids, set aside?

A. As I stated, my first employment was to get a postponement of the sale, which, of course, would be before any sale occurred, and failing in that, we filed objections to the confirmation of the sale, as I recall it, and it was upon our objections to the confirmation of that sale that these proceedings were had in the Federal Court which resulted in the rehabilitation of the company and the reorganization of it and the selling of it to the purchasers of the stock.

296 Q. By your efforts the sale was not confirmed?

A. By the decision of the court it was not confirmed, yes, sir.

Q. And there never was a sale of the assets of the company?

A. Not confirmed, no, sir. There was a sale to the Kansas City Life Insurance Company, if I am not mistaken, but that sale was not confirmed, as I recall it.

Q. The assets, then, of the Insurance Company never went to any other corporation by decree of court, or otherwise, that you know of?

A. No, sir, I think they did not. I think they were permitted to pay the debts of the concern and take over its property and take

over its insurance, that that hadn't lapsed, and whatever the company had the reorganized company took.

Q. What did the assets of the Insurance Company consist of at that time?

A. Well, I suppose the furniture that was used in the business. I think during the first year's business, and the only year of business the company had had up to that time, there was in the neighborhood of twenty-four million dollars of life insurance written. I am not accurate about that, but it was in that neighborhood, as I recall it.

Q. And the expense of that had already been paid for, had it not?

A. The expense of it was what impaired the capital stock of the corporation.

Q. But it had been paid for, and that left twenty-four million dollars of insurance on the books?

A. There had been twenty-four millions, but when we got hold of it I think it was about nine or eleven million dollars, something like that.

Q. That was paid for?

A. The insurance?

Q. Yes, sir.

A. I am not able to state about that, but the decree will show whatever was paid or that was unpaid.

Q. Do you know how much was reserved with the Insurance Commissioner at that time on the policies that had been issued?

A. Deposited—how much reserve?

Q. Yes.

A. I could not say off-hand. I don't know if there was any, I don't remember. If I ever knew, I don't know now.

Q. Don't you remember it was the habit and custom of the company to put up a reserve with every policy issued?

A. Yes. I know that that was the requirement, but are you speaking of the date when it was taken over or afterwards?

Q. As the time you took it over do you know whether the reserve on those policies that had been written was up with the State Insurance Commissioner?

A. There was some reserve, but I don't know how much.

Q. Do you know if there was any of the policies that did not have the reserve up there?

A. I don't know that there was. I don't really know anything about it.

Q. Was there any money in the treasury of the company as an asset at that time?

A. If there was I don't recall it; I didn't know if there was. I had no means of knowing, I was not one of the re-organization
297 committee at that time, I had no way of knowing.

By Mr. Landon:

Q. Mr. Orr, you represented Mr. J. H. Upton, did you not?

A. I don't think so. Wasn't he the actuary?

Q. Yes; he was the actuary. This paper I hand you, Exhibit 45, was prepared by you, was it not?

A. What is the paper?
Q. Look on the back of it. (Witness examines paper.)
A. I should say it was.
Q. Is this Exhibit 46 the objections that you filed to the confirmation of the sale?
A. Well, if these are the original objections, I prepared them. That is all. Yes; my name appears here.
Q. Then you prepared this affidavit for Mr. Upton to sign in support of your objections?
A. I have no doubt I did, but I have no recollection of it.

Mr. Landon: I desire to offer and read Exhibit 45, filed in the Federal Court on the 14th day of August, 1908. I want to offer the exhibit, together with all endorsements on the back of it.
Also, I offer Exhibit 46, together with all endorsements on the back thereof, filed August 13th, 1908.
Mr. Cooper: I object to Exhibit 45. It appears it was evidence introduced at the hearing of the objections filed. It was a matter submitted to the court who heard the objections. I object to it as being incompetent, irrelevant and immaterial.
Mr. Landon: Let me ask a few questions, I think I can make it competent.

By Mr. Landon:

Q. You did represent Mr. F. M. Pearl, stockholder and policy holders in the Great Western Life Insurance Company, did you not?
A. Yes, sir.
Q. And when the order of sale was made, selling the assets of this company, Mr. Pearl objected to such sale, isn't that right?
A. Yes, sir.
Q. And you were employed to file his objections to that sale?
A. Yes, sir.
Q. You also objected to the sale to the Kansas City Life Insurance Company and other companies who had bid, didn't you?
A. As attorney for those whom I represented.
Q. As attorney?
A. Yes, sir.
Q. You were also a stockholder of the Great Western Agency Company?
A. Never at any time, now or ever in the past.
Q. This matter of rehabilitation had been discussed prior to the time you filed these objections, had it not?
A. It must have been or I wouldn't have filed them.
Q. You became satisfied, individually and as attorney for Mr. Pearl, that the bids of these insurance companies were not
298 sufficient, that the assets were worth more than is shown by the bids, didn't you?
A. Well, my recollection now is that I did think so, but that wasn't the reason we wanted—that was one reason, but not the sole reason for wanting the confirmation of the sale not agreed to by the court.

But the purpose of these men was to rehabilitate the company, pay the debts.

Q. That was because there were assets there of the company that could be made available in carrying on the insurance business, wasn't it?

A. I have no doubt there was. The company was organized and it had its charter and had some assets, of course, but what they were and their extent, I don't now recall.

Q. You understood that the Great Western Life Insurance Company, however, at that particular time had assets that were worth more than any of the bids of the insurance companies that had been made, didn't you?

A. I believe I was so informed, and I believe that is what I felt.

Q. And you felt that way yourself?

A. Yes, sir.

Q. From your investigations?

A. From the investigation I gave to it, not personally knowing the value of these things, but from the information I had gotten.

Q. And from the information Mr. Upton, the actuary of the Great Western gave you from his examination of the books?

A. I think he was one of the witnesses, yes, sir.

Q. And you took his affidavit in consideration, didn't you?

A. I undoubtedly presented it to the court and I undoubtedly believed what he said to be true, and I depended absolutely on him for the information, because I had no other source.

Q. Did you act on that information?

A. Presented it to the court, yes, sir.

Q. And you afterwards come into the re-organization, didn't you?

A. I became a stockholder of the company after it was organized, yes, sir.

Q. After it was organized?

A. Re-organized, yes, sir.

Q. Then you relied upon the information that you yourself attached to the petition of Mr. Pearl, didn't you?

A. I relied upon the information that was given me, whatever I did with it. If I attached it to the petition, or filed it as an independent item of proof, I don't recall. But I depended, and was compelled to depend on outside information for whatever I got.

Q. And the basis of the re-organization, or reason for it, the thing that actuated you, was that there were assets of the Great Western Life Insurance Company that could be used in carrying on the business when it was gotten out of the hands of the receiver, wasn't it?

A. Undoubtedly—I am speaking now from my recollection—that caused us to wish to reorganize and pay the debts, feeling that there was a nucleus there around which a company could be constructed and carried on. I have no recollection now as to the
299 extent of that, but undoubtedly they had. I was acting for them. It was upon their plan that I proceeded.

The Court: Just a moment. We are taking too much time with this. As I understand, your opinion as to the value of the

assets of this company at that time was based partly upon this affidavit of Mr. Upton?

The Witness: Yes, sir.

The Court: Then the objection is overruled.

A. I would like to state one thing in addition to that. I don't suppose I had any independent notion of the value of this property, and whatever I had was based upon the representations that were made to me by those whom I believed would have a fair knowledge.

By the Court:

Q. Then do you want to withdraw your answer to the effect you didn't believe that the assets of the Company were of any value?

A. If I have ever said that, I wish to withdraw it, because I have never said it, as I recall. I said I have no knowledge now, or ever had, of the value up to the time of the reorganization.

By Mr. Landon:

Q. After the reorganization and after you became a stockholder you did find you had some assets, didn't you?

A. I did find there were some assets there.

The Court: With the statement of the witness, the objection to the affidavit is sustained.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

A. If I have stated I had any opinion of the value, I didn't intend to, because I don't think I did say that, either. I never had any independent opinion of the value of the assets. I had no means of knowing.

(By Mr. Landon:)

Q. Well, you found after the reorganization and when you became a stockholder and general counsel immediately after, and when it was taken out of the hands of the receiver, that there was something over twenty million dollars of insurance on the books, didn't you?

A. I think not. I think there had been. At the time the receivership of the Great Western Agency Company occurred, or at least when it was extended to include the Life Insurance Company, I think there had been written something over twenty-four million dollars, but I am only giving you my recollection. I think there was somewhere from nine to eleven million dollars of it that hadn't lapsed.

The Court: Gentlemen, this is simply repetition.

Mr. Landon: I want to reoffer these Exhibits 45 and 46.

The Court: Objection sustained to Exhibit 45.

To which ruling and action of the court the plaintiff then and there at the time duly excepted and still excepts.

Said document, so offered and rejected by the court, and marked Exhibit 45, is in words and figures as follows:

300 EXHIBIT "45."

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

J. M. WAGSTAFF, R. E. BROOKS, J. E. KEEL, and Others, Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN Life Insurance Company, O. L. Van Laningham, and Others, Defendants.

UNITED STATES OF AMERICA,
State of Missouri,
Jackson County, ss:

J. H. Upton, of said county and state, being first duly sworn, upon his oath deposes and says, that he is now a resident of the city of Kansas City, Missouri; that for the eight years last past he has been continuously engaged in life insurance business, and for the years 1903, 1904, 1905, 1906, he was Examiner and Actuary for the Insurance Department of the State of Kansas; that for the year last past he has been Actuary for the Defendant, The Great Western Life Insurance Company and is familiar with its business, its assets, and its manner of doing business.

Affiant further says that on July 31, 1908, the said The Great Western Life Insurance Company had outstanding and in force, insurance policies in the aggregate sum of about $23,000,000; that the annual premiums produced on such amount of outstanding insurance is about $840,000.00; that on said date, the assets of the Great Western Life Insurance Company were worth about $365,368.46, against which there were insurance liabilities—excluding all death losses—amounting to $166,147.03, leaving the net value of such assets on said date at $199,121.43; that on said July 31, 1908, in the opinion of Affiant, the value of the insurance to said Company, or to any investor desiring to continue the same, would be at least $125,000.00. Affiant further says that in all his experience and acquaintance with life insurance business, the amount of insurance taken and acquired by the said The Great Western Life Insurance Company exceeds that of any or all other life insurance companies during a corresponding period of time; that the said The Great Western Life Insurance Company was first authorized

to do business in April, 1907, and from that time until July 31, 1908, the amount of business above specified and set forth has been acquired and placed and policies of insurance written therefor. Affiant further says that he is reasonably familiar with the character of such business, and with the position and standing of the persons insured, and in Affiant's opinion, the general averages of the insured is as high in standard, both as to moral and financial responsibility as that of any other policy holders in any other company. Affiant further says that while the cost of acquiring such insurance has been rather high, yet from now on, in Affiant's opinion, the cost of carrying on such business and keeping the same intact, will be very greatly reduced, thus adding to the value of such insurance business.

301 Affiant further says, that he knows of the bids having been made at the recent sale of the assets and business of the said The Great Western Life Insurance Company, and that the bid of the Kansas City Life Insurance Company is not either the highest or the best bid offered for such property and thereon affiant says, that while $300,000.00 cash in hand, it is subject to deductions in the total sum of $175,552.40, leaving the amount of cash offered to be paid to the receiver on account of such bid, the sum of $124,447.60, and such bid with said deduction is still open to the further construction of a further deduction of about $14,000.00 more, being a sum held in a special deposit on account of the unauthorized sale of stock in said company, which if made, would further reduce the amount of said bid in cash to about $110,000.00; while the actual value of the assets of said company so proposed to be sold, is at least $199,121.43; that in addition to the amount of cash so offered to be paid, the said Kansas City Life Insurance Company further offered to pay $1.00 per thousand per year for a term of five years on such insurance as might continue in force during said period of five years, which in affiant's opinion, could not possibly amount to more than $30,000.00, and even that sum is contingent and payable only in the nature, if at all, but if paid, would make the total cash payments, on account of said bid of the Kansas City Life Insurance Company about $140,000.00, which would include not only all of the assets of said company, but all of its business of every kind and nature.

Another bid made at said sale was by the Philadelphia Life Insurance Company, whose bid was $243,000.00 cash in hand for the assets alone, subject to a deduction of approximately $132,000.00, leaving $111,000.00 for the assets alone, in addition to which said Philadelphia Life Insurance Company proposed to pay in cash absolutely for the insurance in force, the sum of about $104,000.00, making a total cash payment at once of about $215,000.00, in addition to which the said Philadelphia Life Insurance Company agreed to pay to the annuity certificate holders and to the Agency stockholders, a sum equal to 25 per cent of the profits arising from the business of the Great Western Life Insurance Company during an unlimited period of time, thereby, in affiant's opinion, and as shown by said bids, making the bid of the Philadelphia Life Insurance Company immeasurably more advantageous and better, to

the receiver and to the said the Great Western Life Insurance Company than any other bid offered.

Affiant further says, that the third bid was made by the Trans-Mississippi Life Company, which was for $284,898.27, cash in hand, from which is to be deducted for reserves amounting to $158,725.50, leaving the net cash proceeds to the company for the assets, of $126,172.75, which in itself, would be a better cash offer than that offered by the Kansas City Life Insurance Company.

Affiant further says, that from his familiarity with the assets and the business of the said The Great Western Life Insurance
302 Company, that neither of said bids is in any manner adequate, nor would either of said bids approximate the value of the assets and property sold under said order of sale. Affiant further says that if the sale so made is confirmed, the amount so realized will not pay the debts and obligations of the said The Great Western Life Insurance Company, to say nothing of giving any return whatever to the stockholders, or to those who have invested their money in annuity certificates, all of which would be a total loss. Affiant further says that in his opinion if the assets and the insurance business of said company were sold separately, a sufficient sum would be realized to pay and satisfy all of such outstanding obligations, exclusive of the capital stock and annuity certificates.

Affiant further says that he is familiar with the published reports of the financial condition and the character of business of the Kansas City Life Insurance Company, and says that as shown by the latest published report of the said Kansas City Life Insurance Company, the total amount of its surplus on June 30, 1908 was about $51,000.00; that about 30 per cent of its assets at that time consisted of premium lien notes of no value except as off-sets to reserve liabilities; that originally the Kansas City Life Insurance Company was an assessment company, and not until 1903 was it organized as a legal reserve company, and since that date it has acquired a large amount of business by re-insuring the Fraternal Home, a fraternal institution of Hamilton, Missouri, and that by reason of assessment insurance which it had on its books at the time of its reorganization, and by reason of the insurance acquired by the purchase of the Fraternal Home, in his opinion, at least 40 per cent of the business on its books is business acquired either through assessment companies, including its own, and fraternal insurance acquired through said Fraternal Home Society, and that business acquired in this manner is not of the high class and character of business such as is the business which is on the books of the Great Western Life Insurance Company; and that the policyholders of the Great Western Life Insurance Company, by reason of the class of business which is on the books of the Kansas City Life Insurance Company at the present time, would be in the position of furnishing the necessary money to meet the excess death losses which would come from this business acquired from assessment and fraternal societies, and in that way impair the strength of the protection which they would otherwise have. Affiant further says that during all of the present year of 1908, he has been associated and connected with the Great

Western Life Insurance Company at Kansas City, Missouri, and acting as its actuary; that after the appointment of the receiver in the above cause, and after said receiver, together with the new board of directors, took possession of the property and business of said company, as affiant is informed and believes, an order of sale was made by this court ordering the receiver, in effect, to advertise and sell the assets and business of the said The Great Western
303 Life Insurance Company; that the only notice given, as affiant is informed and believes, of such sale, was by the publication of two weeks in some of the Kansas City papers. Affiant further says, that companies and concerns who would likely be interested in bidding for such property and business are located principally in cities in which such papers are not of general circulation, and such notice would not, in affiant's opinion, convey to concerns which would be likely to bid, any notice of such pending sale. Affiant further says, that, although as he is informed, the order for such sale was made on July 6, 1908, yet on account of the action of those in charge of said company, no statement was prepared which said management was willing to give to prospective bidders showing the condition of said company, until about the 16th day of July, 1908, and then such statement did not contain within itself the necessary data to enable a company to intelligently make a bid, and affiant was instructed to give out no information concerning the assets and property of said company excepting such as might be approved by the receiver of said company, and affiant was required to keep strict account of what information had been given out, and for whom. The result of which was that comparatively few persons obtained information relative to the condition and value of the assets and property of said company.

Affiant further says, that stating from his experience and acquaintance with the business of the Great Western Life Insurance Company, if the management of said company is restored to the stockholders under a competent board of directors and officers, that all of the debts and obligations of said company could be paid, and the impairment of its capital stock fully repaired, and the business of said company made profitable both for the stockholders and annuity holders, and as a firm insurance to policy holders.

(Signed) JOHN H. UPTON.

Subscribed and sworn to before me this 14th day of August, 1908.

(Signed) ADELAIDE UTTER,
Clerk U. S. Cir. Ct."

Indorsed on the back thereof is the following:

"3367 United States Circuit Court Western Division of the Western District of Missouri. J. M. Wagstaff et al., plaintiff, against The Great Western Agency Co. and Others, defendant. Affidavit of J. H. Upton. B. P. Waggener, J. W. Orr, Solicitors for F. M. Pearl and others. Filed Aug. 14, 1908. Adelaide Utter, Clerk."

Said document, so offered and introduced in evidence, marked Exhibit 46, is in words and figures as follows:

304 EXHIBIT "46."

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

J. M. WAGSTAFF, R. E. BROOKS, J. E. KEEL, and Others, Complainants,

vs.

THE GREAT WESTERN AGENCY COMPANY, THE GREAT WESTERN Life Insurance Company, O. L. Van Laningham, and Others, Defendants.

UNITED STATES OF AMERICA,
State of Missouri,
Jackson County, ss:

James Chappelle, being first duly sworn upon his oath, deposes and says that he is a resident of the City of Topeka, in the State of Kansas, and is interested as a stockholder in one of the defendant companies; that after he was informed of the action of this court ordering the sale of the assets and property of the Great Western Life Insurance Company, he, with other stockholders and annuity certificate holders of said company, undertook a plan of rehabilitation of the said The Great Western Life Insurance Company, and to that end has, with others, conferred with a large number of the stockholders and annuity certificate holders of the said companies defendant, and also with a number of the policy holders of the Great Western Life Insurance Company. Affiant further says, as a result of such conference and investigation, there has been contributed by voluntary assessments from such stockholders and annuity certificate holders, for the purpose of rehabilitating and reorganizing the defendant, The Great Western Life Insurance Company, a sum aggregating about $120,000.00; that he has assurance from a large number of other such stockholders, annuity certificate holders and policy holders, of their willingness to co-operate and add additional funds for said purpose, and thereon affiant believes and states the fact to be that such stock, annuity and policy holders are now in a position to pay off and discharge all of the outstanding pressing obligations of the said, The Great Western Life Insurance Company, and if given reasonable time so to do, all impairment of the capital stock of said company will be repaired and said business re-established and reorganized by the stockholders, annuity and policy holders of said company, and placed upon a substantial basis, and in position and condition to carry out and perform every outstanding obligation of the said The Great Western Life Insurance

Company. Affiant further says that if the sale of the assets and property of the said, The Great Western Life Insurance Company is confirmed and the property of said company turned over to the Kansas City Life Insurance Company at its bid, the sum realized therefrom will be entirely insufficient and inadequate to pay off and discharge the pressing obligations of said company, to say nothing of any return of investment made by the stockholders and annuity certificate holders of said company, whereas, if the stockholders and annuity certificate holders, represented by affiant, are permitted to reacquire the said property, all of its debts and
305 obligations will be fully paid, and all its contracts will be fully and completely performed, and the stockholders and annuity certificate holders, as well as the policy holders, will realize on their investment in said company.

(Signed) JAMES CHAPPELLE.

Subscribed and sworn to before me, this 14th day of August, 1908.

(Signed) ADELAIDE UTTER,
Clerk U. S. Cr. Ct."

Indorsed on the back thereof is the following:

"3367. United States Circuit Court, Western Division of the Western District of Missouri. J. M. Wagstaff et al., plaintiffs, against The Great Western Agency Co., and others, defendants. Affidavit of James Chappelle. B. P. Waggener, J. W. Orr, Solicitors for F. M. Pearl and others. Filed Aug. 14, 1908. Adelaide Utter, Clerk."

By Mr. Cooper:

Q. The Great Western Life Insurance Company was a Missouri corporation?

A. Yes, sir; organized under the laws of Missouri.

By Mr. Sherman:

Q. Mr. Orr, was this reorganization plan ever discussed in open court?

A. I think it was, quite thoroughly. I think it was all read to the court and explained to the court, and it was for that reason that the attorneys representing the receiver, and those representing the two insurance companies, the Kansas City Life and the Philadelphia Life, said it wasn't feasible, it could not be done. I think it was all explained, and I think the court in the decree adopted that as a part of the decree. The plan of reorganization, it seems to me—I guess I am right about that—was for approval. Of course, the court could not approve it unless the court knew what it was. Isn't that in the decree?

Mr. Cooper: Judge McPherson says in his remarks, he listened to some four or five hours' argument.

Mr. Sherman: That was on objections to the approval of the sale or bids.

A. All of this occurred on the objections to the confirmation of the sale. We were not in court in any other way in that matter, that is my remembrance of it.

By Mr. Hill:

Q. You did make representations to the court that the assets of this company were in excess of the liabilities, and that was one of the reasons why you thought it was capable of being resuscitated and no necessity for this sale?

A. I don't have any independent recollection of that. But if there was evidence showing that the assets were in excess of—
306 worth more than the bids, I undoubtedly stated that, but I have no independent recollection of it. If it is shown by that, I stated it from the testimony offered and not from any opinion of my own.

By the Court:

Q. Let me ask a question, please, gentlemen. What legal notice, if any, was served upon the creditors of the insurance company of the application for the reorganizatoin decree?

A. Well, I don't recall just what the notice was.

Q. Do you know whether any notice was served?

A. All of the creditors——

Q. (Interrupting.) Legal notice.

A. All of the creditors of the insurance company were represented there in one way or another, as far as I knew of there being creditors, and the decree itself specifies the debts and liabilities of the concern.

Q. Well, I had reference to the annuity certificate holders.

A. I don't know, further than many of them were represented there, but whether all of them or not, I am not sure. I think Mr. Sherman represented a number.

Q. You knew, did you not, that creditors were given until the first day of October within which to file their claims?

A. Yes, sir; I think that is in the decree.

The Court: Is that in the decree?

Mr. Landon: In the first order, the order of sale.

Q. The referee published a notice requiring creditors to appear and file their claims on or before October 1st, 1908?

A. Yes, sir.

Q. This reorganization decree was entered on the 27th of August?

A. Yes, sir; that is my recollection.

Q. What was the purpose or motive in entering this reorganization decree before the creditors had an opportunity, under the direct order of court, to enter their appearance and present their claims?

A. Well, as I remember it, it was entered generally, but that the court in the concluding part of the decree retained jurisdiction of the whole subject, and stated, as I remember it, that he would take any

action that any future development seemed to require. I believe that is in the decree, isn't it?

Q. Was it the theory of the court and counsel for the company that creditors were in court regardless of the time limit for their appearance under this notice?

A. I think so.

Q. That is all.

Witness excused.

Mr. Cooper: I offer in evidence a list of subscriptions received by the reorganization committee, referred to in the evidence—that is, the committee referred to.

Mr. Landon: Mr. Cooper, in offering this you don't know whether the parties are annuity certificate holders in this list, or stockholders?

307 Mr. Cooper: It includes both.

Mr. Landon: But you don't know which is which?

Mr. Cooper: Except by comparing them with another paper in evidence here would show. We have in evidence a list of the annuity certificates.

Said document, so offered and introduced in evidence, was marked Exhibit 47, and is in words and figures as follows:

308 WILLIAM THOMSON, called as a witness on the part of the plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Landon:

Q. State your name, residence and occupation?

A. William Thomson, Kansas City, lawyer.

Q. Were you connected in any way with the Great Western Life Insurance Company prior to its being in the hands of the receiver?

A. Yes, sir.

Q. In what capacity?

A. I was attorney for the company—well, from shortly after its organization——

Q. (Interrupting.) In what year?

A. In 1907, until—well, from a year on. That is, my contract was for a year on and then I continued up to the time of the consolidation in 1912.

Q. What was the capital stock?

A. One hundred thousand dollars.

Q. How was that paid?

A. Originally?

Q. Yes.

A. Originally it was paid by nine persons paying one hundred dollars each, and the Great Western Agency Company paying——

The Court (interrupting): That matter isn't in dispute, it is already in evidence.

Mr. Cooper: And it won't be in dispute.

A. I was also a director of the company up to the time of the receivership.

Q. Now, when the company went into the hands of the receiver, just in a general way, and approximately how much insurance had it outstanding?

A. My recollection was that there was a boast of twenty-seven thousand dollars.

The Court: You mean twenty-seven million dollars?

A. Twenty-seven million dollars, but I presume that was a boast, I think it was only about twenty-four million.

Q. Were the legal reserves, if you know, put up with the superintendent of insurance as required?

A. I know that that was the custom of the company to put up reserve with the policies.

Q. Do you know that the reserve was up with the superintendent of insurance?

A. Well, of course, I did not have personal knowledge, except as I knew from time to time in the discussion that the reserve was being put up.

Q. You had no occasion to observe or know that the law was not complied with?

A. No, sir.

Q. Now, when the company was turned over, or turned back from the receiver into the new directors of the company, what assets were turned back, if you know? Approximately the amount and value.

A. Now, as far as amounts, I can't state.

Q. Well, approximately?

A. I can't even state that.

Q. Do you know what they were? What they consisted of?

A. As to the personal knowledge as to the amount of cash on hand, I don't know.

309 Q. Approximately?

A. But there was the insurance which was nearly intact at that time. There had been a little dropping off during the time, and the dropping off was more larger in the first year afterwards.

Q. Well, the amount of money in the treasury and on hand?

A. I can't tell.

Q. Did they have money in the treasury and on hand?

A. I had no reason to believe there was not, because I remember I was getting my pay right along.

Q. Prior to the time the receiver was appointed, I will ask you whether or not the company was paying up its bills for current expenses?

A. I never heard any complaint that they were not.

Q. You were general counsel for the company?

A. No, sir; I was not general counsel. Senator Cooper was general counsel and I was the attorney.

Q. Were you in position to know if they had not been kept up?

A. I think so. I will state I was a very close friend of the president, and I think I would have found out; and, besides, I was a director up to that time.

Q. A director of the Great Western Life Insurance Company?

A. Yes, sir.

Q. Now, how were the funds of the company invested prior to the receivership? What was the policy of the company?

A. My recollection was that Mr. Upton, and—who was the other?

Mr. Cooper: Hanna and Upton.

A. Yes, sir; they had a contract with the company on certain terms to lend the money to a certain amount in Kansas for a certain number of years, and they paid a large premium for that right. What loans were made, I think, were made in Kansas generally. There were some loans made here in Kansas City. I remember Senator Cooper and I examining the value.

Q. Now, what was approximately the amount of those loans?

The Court: Aren't they shown by the records of the Federal Court?

Mr. Cooper: Yes, sir.

The Court: There must have been an inventory. I think it must be in the records of the Federal Court. Just consider them in evidence.

Mr. Atwood: No objection.

Mr. Cooper: They are already offered in evidence. All of the receiver's reports and the inventories and the question of the reserve in Jefferson City, all of that is already in the case, every bit of it.

Mr. Landon: Then I don't care to take up time, but I want to show there were other assets.

The Court: I can't permit you to introduce cumulative evidence this morning. We have simply continued the case over to this morning to hear testimony of Mr. Orr and not to re-open the case.

310 A. There is one matter I wish to state, as to the company going ahead. Under my contract with them as attorney, it was before the receivership and continued on after the receivership and kept for the full length of that contract. It was renewed afterwards from time to time, but this particular contract carried it over the period of the receivership and I was recognized by the company under that contract.

By Mr. Landon:

Q. Now, I will ask you one more question, and that is, if after the new directors were elected and the receiver discharged, if from time to time it was discussed among the directors of the corporation as to the trouble that might be made by the holders of these annuity certificates outstanding?

A. There were just three persons whom I recollect they were directors. One was Mr. Orr and another was president Stevenson, and the other was Secretary Chappell, and I heard discussions from time to time.

Q. After the re-organization and rehabilitation?

A. Yes, sir, in regard to these annuity certificates and the liability of the company on the same.

Q. And when it come to the merger with the International Life was that matter also discussed?

A. Not only discussed, but it was pressed very, very hard.

Q. That is all.

By Mr. Sherman:

Q. Judge, do you know whether or not in insurance matters the value of an insurance company or going insurance company is based upon the amount of insurance in force?

A. Well, I am not an insurance man, but being connected with the company as attorney, I know that great value was placed on that, but what it would be I don't know.

Q. You have no knowledge of how much per thousand of insurance in force?

A. No, sir. The cost of that insurance was largely paid from the premiums of the first year. The first year's cost generally took up the reserve that was put up with the state, and agents' commission and office expenses. So that the price of putting on that business was all paid for in the first year, or considered so.

Q. Well, you know as a matter of fact that an insurance company is valued at so much per thousand of insurance in force?

A. Well, I have an opinion, but I have no absolute knowledge.

Q. You don't know what it is?

A. No, sir.

Q. Do you know whether or not after this so-called re-organization, or after the company was turned over to the new officers, that at that time the capital stock was unimpaired and whether or not they had a surplus?

A. Why, after it was turned over they had a surplus.

Q. And by having a surplus, you mean, of course, that the capital stock was unimpaired, and a surplus was over and above the one hundred thousand dollars capital stock?

A. Yes, sir. I will state further in relation to that, that
311 I never knew of any of the stock being sold after the re-organization for less than two for one, clear up to the time of the consolidation.

Q. As a matter of fact, you know the insurance department would not have permitted them to do business with the capital at all impaired?

A. We know that.

By the Court:

Q. There was no stock, however, in the company or belonging to the company which had not been gratuitously donated by the previous stockholders, as I understand it?

A. Well, there was only one that I know of, and that was my own. I gave back my share and paid two hundred dollars for a new share.

Q. In other words, you gave the company your stock and then paid two for one to get it back?

A. Yes, sir.

By Mr. Landon:

Q. These parties to the re-organization, they didn't hold any of the stock of the Great Western Insurance Company prior to the re-organization, did they?
A. I don't think there was one of them.
Mr. Lyons: Except the stockholders in the Agency Company.
The Court: Wait just a moment. You say none of the purchasers of the re-issue of stock held previous stock in the company?
A. Of the Insurance Company?
The Court: Yes.
A. No, sir.

By Mr. Landon:

Q. They were stockholders in the Great Western Agency Company?
A. Yes, sir.

By Mr. Cooper:

Q. You spoke of the policies lapsing the next year in large numbers. That is when the premiums come due?
A. Yes, sir.
Q. That is all.

Witness excused.

Thereupon all parties rested and this was all the evidence introduced.

Thereupon the defendant asked the court to give each and every one of the following written Declarations of Law:

"In the Circuit Court of Jackson County, Missouri, at Kansas City.

No. 75591.

ADRIAN F. SHERMAN, Plaintiff,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY, Defendant.

Declarations of Law Requested by the Defendant.

I.

Now at the close of the case, the court declares the law to be that under the pleadings and the evidence, plaintiff cannot recover and the finding and judgment must be in favor of the defendant.

("Refused.")

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II.

The court declares the law to be that the decree and judgment of the Circuit Court of the United States of the Western Division of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company and others, is binding and conclusive upon the plaintiff, and plaintiff is thereby barred from maintaining this action and the judgment herein must be for and in favor of the defendant.

("Refused.")

III.

The court declares the law to be that if the plaintiff acquired the certificate described in the petition subsequent to the decree rendered by the United States Circuit Court for the Western Division of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company et al., and with knowledge of such decree, then he cannot recover in this case, and the finding and judgment must be for and in favor of the defendant.

("Refused.")

IV.

The court declares the law to be that the causes of action herein accrued at the time that the Great Western Life Insurance Company first failed to make the payments provided for by the certificate sued on, and that if said date was more than five years before the institution of this suit, then the action is barred by the five year statute of limitations of Missouri, and, therefore, plaintiff cannot recover herein and judgment must be for and in favor of the defendant.

("Refused.")

V.

The court declares the law to be that if the holders of certificates other than those mentioned and described in the petition contributed money as provided for in the decree of the United States Circuit Court for the Western Division of the Western District of Missouri in the case of Wagstaff against the Great Western Life Insurance Company et al., for the purposes mentioned in said decree and in reliance upon the force, effect and validity thereof, and that the plaintiff and the then holders of the certificates mentioned in the petition, knew of such payments of money and failed and neglected to protest or object thereto, but said or did nothing, then they are estopped from questioning the force, effect and validity of said decree, and plaintiff cannot recover and the judgment herein must be for and in favor of the defendant.

("Refused.")

Which Declarations of Law numbered "I," "II," "III," "IV" and "V," and each and every one of them, the court refused to
313 give; and to which ruling and action of the court in refusing to give said Declarations of Law so requested by the defendant, and to the court's refusal to give each and every one of them, respectively, as requested by defendant, the defendant by its counsel then and there duly excepted and still excepts.

And afterwards, to-wit, on Friday, the 14th day of June, 1918, and at the May term, 1918, of said Circuit Court, the court, under the pleadings, the evidence and the Declarations of Law aforesaid, gave judgment for plaintiff. And,

Thereupon the court ordered and directed, and there was made and entered of record in said cause, by the clerk of said court, in Record 312, at page 341 of the records of the Circuit Court of Jackson County, Missouri, at Kansas City, the following record judgment entry:

Judgment is set out on page — of this abstract as per stipulation.

And afterwards, and on the same day, to-wit: on Saturday, the 13th day of July, 1918, and at said May Term, 1918, of said Circuit Court, the defendant filed its motion for new trial in said cause in the words and figures following:

"In the Circuit Court of Jackson County, Missouri, at Kansas City.

75591.

ADRIAN F. SHERMAN, Plaintiff,

v.

INTERNATIONAL LIFE INSURANCE COMPANY, Defendant.

Motion for a New Trial.

Comes now the defendant, International Life Insurance Company, and prays the court to set aside the judgment herein and to grant defendant a new trial of this cause for the following reasons:

(1) The findings and judgment are against the law.

(2) The findings and judgment are against the evidence.

(3) The findings and judgment are against the law and the evidence; and against the weight of the evidence.

(4) The judgment is excessive.

(5) The court erred in overruling defendant's objection to the introduction of any testimony under the petition, to which ruling and action of the court defendant excepted at the time.

(6) The court erred in overruling defendant's demurrer to plaintiff's evidence, to which action of the court defendant excepted at the time.

(7) The court erred in refusing to give defendant's peremptory declaration of law requested at the end of the case, to which action defendant excepted at the time.

(8) Under the pleadings and the evidence, the findings and judgment should have been for the defendant.

314 (9) The court erred in refusing to give the declarations of law and each of them requested by the defendant and numbered 1, 2, 3, 4 and 5, to which action of the court in refusing each of said declarations of law, defendant at the time excepted.

(10) The court erred in admitting incompetent and improper testimony offered by the plaintiff, to which defendant excepted at the time.

(11) The court erred in excluding competent, material and relevant testimony offered by defendant, to which action defendant excepted at the time.

(Signed) COOPER, NEEL & WRIGHT,
(Signed) LESLIE J. LYONS,
Attorneys for Defendant."

On the back or reverse side thereof appears the following: "Number 75591. Adrian F. Sherman, Plaintiff, v. International Life Insurance Company, Defendant. Motion for a New Trial. Cooper, Neel & Wright, Kansas City, Missouri. Filed Jul. 13, 1918. James B. Shoemaker, Clerk, By (signed) W. G. Donnelly, D. C."

And afterwards, and on the same day, to-wit: on Saturday, the 13th day of July, 1918, and at said May Term, 1918, of said Circuit Court, the court overruled defendant's said motion for new trial so filed in said cause; and to which ruling and action of the court in overruling said motion for new trial, the defendant, by its counsel, then and there duly excepted and still excepts.

And afterwards, and on the same day, to-wit: on Saturday, the 13th day of July, 1918, and at said May Term, 1918, of said Circuit Court, the defendant filed its application and affidavit for appeal in said cause, in the words and figures following:

"In the Circuit Court of Jackson County, Missouri, at Kansas City.

Number 75591.

ADRIAN F. SHERMAN, Plaintiff,

v.

INTERNATIONAL LIFE INSURANCE COMPANY, a Corporation, Defendant.

Application and Affidavit for Appeal.

STATE OF MISSOURI,
County of Jackson, ss:

A. L. Cooper, of lawful age, being first duly sworn, upon his oath says that he is the agent of the defendant and appellant, International Life Insurance Company, a corporation, and is authorized to and does make this affidavit for and in behalf of said defendant and appellant, and that defendant's appeal herein is not made for vexation or delay, but because affiant believes that the defendant and appellant is aggrieved by the judgment and decision of the court. Appeal is prayed to the Supreme Court.

(Signed) A. L. COOPER.

315 Subscribed and sworn to before me this 13th day of July, A. D. 1918.

My term expires August 3, 1918.

[Seal Blanche A. Green, Notary Public, Jackson County, Mo.]

(Signed) BLANCHE A. GREEN,
Notary Public, Jackson County, Missouri."

On the back or reverse side thereof appears the following: "Number 75591. Adrian F. Sherman, Plaintiff, v. International Life Insurance Company, Defendant. Affidavit and Application for Appeal. Cooper, Neel & Wright, Kansas City, Mo., Filed Jul. 13, 1918., James B. Shoemaker, Clerk, By (signed) W. G. Donnelly, D. C."

And afterwards, and on the same day, to-wit: on Saturday, the 13th day of July, 1918, and at said May Term, 1918, of said Circuit Court, the court sustained defendant's said application and affidavit for appeal so filed in said cause, and granted and allowed said defendant, International Life Insurance Company of Saint Louis, Missouri, an appeal in said cause to the Supreme Court of Missouri. And,

Thereupon, the court fixed the amount of defendant's appeal bond in said cause at the sum of sixty thousand ($60,000.00) dollars—said appeal bond to be filed on or before ten days after final adjournment of said May Term, 1918, of said Circuit Court. And,

Thereupon, the court granted and allowed said defendant, International Life Insurance Company of Saint Louis, Missouri, time for filing bill of exceptions in said cause until on or before the 1st day of November, 1918.

And afterwards, to-wit: on Monday, the 28th day of October, 1918, and at the September Term, 1918, of said Circuit Court, the court, for good cause shown, granted and allowed said defendant, International Life Insurance Company of Saint Louis, Missouri, an extension of time for filing its bill of Exceptions in said cause, until on or before the 3rd day of November term, 1918, of said court.

And afterwards, to-wit: on Tuesday, the 12th day of November, 1918, same being the second day of the November term, 1918, of said court, and at the November term, 1918, of said Circuit Court, the court for good cause shown granted and allowed said defendant, International Life Insurance Company of Saint Louis, Missouri, an extension of time for filing its bill of exceptions in said cause until on or before the last day of the November term, 1918, of said court.

316 And afterwards, to-wit: on Thursday, January 9th, 1919, same being the forty-eighth (48th) day of the November, 1918, term of said court, and at the November term, 1918, of said court, the court for good cause shown, granted and allowed said defendant, International Life Insurance Company of Saint Louis, an extension of time for filing its bill of exceptions in said cause until on or before the last day of the January, 1919, term of said court.

Wherefore, the said defendant, International Life Insurance Company of Saint Louis, Missouri, prays the court to settle this its bill of exceptions to all and singular the acts, rulings and orders of said court in the premises, and that the same may be signed, sealed and made a part of the record herein; which is now accordingly done.

Given under the hand and seal of the Honorable Thomas J. Seehorn, Judge of Division No. 3 of said Circuit Court, before whom the said proceedings were had, this 8th day of March, 1919, same being the last day, to-wit: the 48th day of January, 1919, term of this court and during said term.

T. J. SEEHORN, [SEAL.]
Judge of the Circuit Court of Jackson County, Missouri, at Kansas City, Division No. 3.

We hereby approve the foregoing bill of exceptions.

THAD B. LANDON,
Attorney for Plaintiff.

The foregoing is a full abstract of the record in the above entitled case.

COOPER, NEEL & WRIGHT.
CHARLES, G. REVELLE,
LESLIE J. LYONS,
Attorneys for Appellant.

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322 And thereafter, and on the 23rd day of April, 1920, the following proceeings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 1, April Term, 1920.

(No. 21220.)

ADRIAN F. SHERMAN, Respondent.

vs.

THE INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, Missouri, Appellant.

Come now the said parties, by attorneys, and after argument herein, submit this cause to the Court; and, upon motion, the Court doth grant leave of five days to the appellant to file reply brief herein, and five days additional to the respondent to file brief in reply thereto.

And thereafter, and on the 31st day of December, 1920, the following proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 1, October Term, 1920.

(No. 21220.)

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Now at this day it is ordered by the Court that the above-entitled cause to set at the foot of the January Call, 1921, for re-argument.

323 And thereafter, and on the 24th day of January, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 1, October Term, 1920.

(No. 21220.)

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Come now the said parties, by attorneys, and after argument herein, submit this cause to the Court.

And thereafter, and on the 11th day of July, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 1, April Term, 1921.

(No. 21220.)

ADRIAN F. SHERMAN, Respondent.

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Now at this day, a majority of the Judges of the Court not concurring in the opinion herein, the Court doth order that this cause be, and the same is hereby, transferred to the Court in Banc.

And thereafter, and on the 12th day of November, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

324 In the Supreme Court of Missouri, in Banc, October Term, 1921.

(No. 21220.)

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Come now the said parties, by attorneys, and after argument herein, submit this cause to the Court.

And thereafter, and on the 30th day of November, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, in Banc, October Term, 1921.

ADRIAN F. SHERMAN, Respondent.

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Appeal from the Circuit Court of Jackson County.

Now at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised

of and concerning the premises, doth consider and adjudge that the judgment aforesaid, by the said Circuit Court of Jackson County rendered, be affirmed upon condition that the said respondent, within ten days from the date hereof, enter a remittitur herein of the sum of two hundred and twenty-nine and 77/100 dollars ($229.77), and that otherwise the said judgment will be reversed and the said cause remanded. (Opinion filed.)

Which said opinion, so filed on the 30th day of November, 1921, is in the words and figures following, to-wit:

325 In the Supreme Court of Missouri, Court in Banc, October Term, 1921.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

v.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

This is a suit for money had and received growing out of the issuance and sale by the Great Western Life Insurance Company of what it denominated annuity certificates.

There is no substantial controversy as to the facts. In the year 1906, there was organized under the laws of the State of Colorado a corporation known as the Great Western Agency Company, with an authorized capital of two million dollars. This company acquired an advantageous contract with an insurance company of Indiana, extending over a long period of time. Thereupon stock in the Agency Company was sold to a great many persons and through such sales funds were accumulated in its treasury to the amount of something like $80,000. Thereafter, in 1907, the same individuals who had effected the incorporation of the Agency Company and who were in control of it, organized an insurance company under the laws of this State, called the Great Western Life Insurance Company, with a capital stock of $100,000. Through their manipulation the Agency Company borrowed $21,000 and with that and the $80,000 in its treasury it paid up the entire capital stock of the Insurance Company.

Eight of the one thousand shares of such stock the incor-
326 porators held in their own names as individuals and the remaining nine hundred and ninety-two shares they held as trustees for the Agency Company. It became merely a holding company.

During the first year following its incorporation the Great Western Life Insurance Company wrote thirteen million dollars of insurance. The premiums received therefor were absorbed by commissions and overhead expenses. Desiring to raise more funds for the prosecution of its business, it conceived the idea of issuing what it later termed annuity certificates—such certificates to represent one or more shares

in the proceeds arising annually from a certain part of the premiums received by the company. The certificates issued contained the following recitals:

"Whereas, —— —— has paid to the company, for — of its said shares, the sum of $—.

Now, therefore, in consideration of the premises, the company hereby agrees to apportion and pay to the owner thereof an annuity during his life, and thereafter to his heirs or personal representatives, of — shares of the proceeds of twenty-five cents per one thousand dollars of all insurance, except reinsurance, written by the company in the United States for fifty years from the date of its incorporation, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows:

I. The aggregate of said twenty-five cents per one thousand dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by five hundred; the quotient obtained
327 shall be the apportionment to each of said shares, and the total of — shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the company therefor, as stated above.

III. This certificate is assignable in writing and transferable only on the books of the company, in person or by attorney, upon presentation of this certificate at the home office of the company."

The certificates were sold on the basis of $150 per share. They were issued by the company in 1907. The first annuity or dividend on them became due February 1, 1908, and was duly paid.

On May 11, 1908, certain stockholders of the Great Western Agency Company filed a bill in equity in the Circuit Court of the United States for the Western Division of the Western District of Missouri against the Great Western Agency Company, the Great Western Life Insurance Company, and certain individuals, such bill alleging mismanagement of the Great Western Agency Company and the Great Western Life Insurance Company, and complaining of the issuance by the Great Western Insurance Company of these annuity or investment certificates, it being charged that they had been sold in a large number, the amount being something like $330,000, and further, that an attempt was being made to increase the capital stock of the Great Western Life Insurance Company, and prayer was made for the appointment of a receiver to take charge and control of the assets and property of the Great Western Agency Company and of the Great Western Life Insurance Company. A receiver was appointed as prayed. The court also appointed a master in chancery, who in pursuance of the
328 order appointing him, gave notice that all claims and demands held by any person, company or corporation against

either of the companies in the hands of the receiver should be presented to him as such master for a hearing on or before October 1, 1908, or the same would be forever barred.

On July 6, 1908, the court made an order directing its receiver to advertise and sell the property and assets of the Great Western Life Insurance Company. In response to the published notice calling therefor, three bids were filed with the receiver. That of the Kansas City Life Insurance Company was deemed the best by him and on July 28, 1908, he reported a sale to that company and asked its confirmation by the court. Under the terms of the proposed sale the Kansas City Life Insurance Company would have assumed the obligations of the Great Western Life Insurance Company under the latter's contracts of insurance but not its undertakings under the annuity certificates; and rom the cash that was to be paid, the receiver would have realized only about $125,000 for the payment of debts and distribution among the stockholders of the Great Western Agency Company (hereinafter called the stockholders). As the indebtedness alone, excluding the annuity certificates entirely from consideration, exceeded that amount, it was quite apparent that if the sale were confirmed, the stockholders would certainly get nothing and the certificate holders would probably be in like predicament. While the report of sale was pending some of the stockholders and certificate holders held a meeting at Topeka, Kansas, for the purpose of devising means to protect their interests. The meeting was largely attended as were subsequent ones held in Kansas City. At one of these meetings Mr. James Chappelle was "informally designated by certain stockholders and annuity certificate holders as a sort of trustee to collect money and take such steps as might be necessary to pay the debts of the Insurance Company and to generally handle the situation."

The application of the receiver for confirmation of the sale coming on for hearing, a postponement was asked by some of the
329 stockholders and certificate holders. The appearances and the order of the court made in that connection, as shown by the record, are as follows:

"Now on the fifteenth day of August, 1908, being one of the regular days of the April, 1908, term of said court, the above cause came on to be heard upon the application of the receiver for the confirmation of the sale of the assets, properties and business of The Great Western Life Insurance Company, in accordance with the bid of The Kansas City Life Insurance Company; the receiver, C. S. Jobes, Esquire, appearing in person and by his solicitor, E. L. Scarritt, Esquire; the Kansas City Life Insurance Company, a bidder, appearing by R. J. Ingraham, its solicitor; the Philadelphia Life Insurance Company, a bidder, appearing by W. F. Guthrie, its solicitor; the National Bank of Commerce, a creditor, appearing by H. C. Ward, its solicitor, and F. M. Pearl and other stockholders of the Great Western Agency Company and annuity certificate holders of the Great Western Life Insurance Company who are similarly situated, appearing by B. P. Waggoner and James W. Orr, said stock-

holders praying a postponement of said hearing, and representing to the court that the said stockholders and annuity holders were endeavoring to raise from the stockholders and annuity holders a sufficient fund to pay off all of the debts of the said The Great Western Life Insurance Company, and to meet all of its obligations and to rehabilitate and reorganize said company, and it appearing to the court that there are reasonable prospects of the accom-
330 plishment of the reorganization on such plan, and thereby secure to the creditors of said company the full payment of all of the debts or liabilities of said life insurance company.

"It is therefore considered and ordered by the court that the further hearing of the application of said receiver to confirm the sale of said property and assets of the Great Western Life Insurance Company be and the same is hereby postponed and continued until Tuesday, August 25, 1908, at nine o'clock a. m."

The order just set out indicates that the stockholders and certificate holders who appeared did not present any definite plan for rescuing the Insurance Company from the receivership. In connection with their application for a postponement of action on the report of sale, an affidavit of Mr. Chappelle was filed in which this appears:

"He, affiant, with other stockholders and annuity certificate holders of said company, undertook a plan of rehabilitation of the said The Great Western Life Insurance Company, and to that end has, with others, conferred with a large number of the stockholders and annuity certificate holders of the said companies defendant, and also with a number of the policy holders of the Great Western Life Insurance Company. Affiant further says, as a result of such conference and investigation, there has been contributed by voluntary assessments from such stockholders and annuity certificate holders, for the purpose of rehabilitating and reorganizing the defendant, The Great Western Life Insurance Company, a sum aggregating about $120,000.00; that he has assurance from a large number of other such stockholders, annuity certificate holders and policy hold-
ers, of their willingness to co-operate and add additional
331 funds for said purpose, and thereon affiant believes and states the fact to be that such stock, annuity and policy holders are now in a position to pay off and discharge all of the outstanding pressing obligations of the said, The Great Western Life Insurance Company, and if given reasonable time so to do, all impairment of the capital stock of said company will be repaid and said business re-established and reorganized by the stockholders, annuity and policy holders of said company, and placed upon a substantial basis, and in position and condition to carry out and perform every outstanding obligation of the said The Great Western Life Insurance Company."

The plan finally adopted by Chappelle and those who were co-operating with him was that each stockholder and certificate holder

should pay into a fund, to be used in liquidating the debts and repairing the capital stock of the Insurance Company, an amount equivalent to one-fourth of the face value of the stock or annuity certificate held by him, and receive in return upon the surrender of his stock or annuity certificate, as the case might be, as much of the stock of the Insurance Company as his cash contribution to the fund would buy, on the basis of the latter stock being worth twice its par value. Practically all of the stockholders and from 50 to 75 per cent of the certificate holders acceded to the plan and participated therein by wholly surrendering their several holdings for the mere privilege of buying stock in the Insurance Company at $200 per share—twice its par value. And they paid into the "reorganization" fund enough money to pay for $130,000 worth of the stock on that basis, before the date to which the further hearing of the receiver's application for confirmation of the sale had been continued.

On August 27, 1908, they presented their plan to the court;
332 it was approved; and after directing the payment of the $130,000 and other funds into the hands of a custodian to be by him applied to the payments of the debts, a schedule of which was therein set out, the court by its decree lifted the receivership and ordered the receiver to redeliver to the Insurance Company its property and assets.

The recitals and provisions of the decree discharging the receivership, having a bearing on questions presently to be considered, are as follows:

"Now on this 27th day of August, 1908, being one of the regular days of the April, 1903, term of said court, came on further to be heard the objections and exceptions of F. M. Pearl and other stockholders of The Great Western Agency Company and Annuity Certificate holders of The Great Western Life Insurance Company to the confirmation of the sale of the assets, properties and business of said The Great Western Life Insurance Company heretofore made by the Receiver hereof, complainants appearing by John H. Atweed, Esq., and H. C. Timmonds, Esq., said Receiver appearing in person and by E. L. Scarritt, Esq., and Frank P. Sebree, Esq., his solicitors; The Kansas City Life Insurance Company, a bidder at said sale, appearing by Charles M. Howell, Esq., and Frank Smith, Esq., its solicitors; Franklin Adams, J. Q. Cowee and other interveners appearing by A. L. Cooper, Esq., their solicitor; said objectors appearing by E. A. Berry, Esq., James W. Orr, Esq., their solicitors; —— Hess appearing by Hunt C. Moore, Esq., his solicitor, and A. F. Sherman, Esq., appearing for himself and certain other annuity certificate holders.

"And said objections and exceptions being presented to the court, and said objectors praying leave to reorganize and rehabili-
333 tate the said The Great Western Life Insurance Company and to pay its debts, outstanding obligations and take over its properties, moneys, credits and effects and restore and make good any impairment of its capital stock and thereafter conduct the business of the said The Great Western Life Insurance Company; and

all parties being before the court and being heard and the court being fully informed and advised, it is considered, ordered and decreed:

I. That the plan for the reorganization and rehabilitation of the said The Great Western Life Insurance Company presented to this court be, and the same is, hereby approved by the court, upon the following terms and conditions, viz:

* * * * * * *

Whereas it has further been the plan of the said reorgani-
334 zation of the said Life Insurance Company to permit holders of socalled annuity certificates heretofore issued by the said Life Insurance Company, upon the payment of the sum of $37.50 upon each share of such certificates and upon the surrender and cancellation of such certificates to receive of the capital stock of the said Life Insurance Company stock of the said company of the par value equal to one-half of the amount of such payment. Certain certificate holders have already agreed to this, aggregating more than one-half thereof, and all such annuity certificate holders who have not so done are hereby given the privilege of so doing for twenty days from date hereof, to avail himself of such privilege, and any such annuity certificate holder failing to so avail himself within such period of time of 20 days from this date shall no longer have such privilege or right, and such annuity certificate holders shall thereafter be barred and estopped from making any claim of any kind whatsoever against said Life Insurance Company or officers or stockholder thereof, or against any assets of said company, and such annuity certificates will then and thereby be fully canceled in law and in equity, and such annuity certificate holders will have no further rights, claims or demands against said company, its officers, stockholders, assets or property on account thereof."

At the time of rendering the decree the court informally expressed its views somewhat at length in regard to what it considered the anomalous position of the certificate holders. Among other
335 things, the court in effect said that such holders were neither creditors in the sense that they were entitled to have their certificates liquidated by a cash payment, their present worth not being ascertainable, nor were they stockholders; that the issuance of the certificates was possibly ultra vires the Insurance Company; that in any event the legal rights, if any, of the holders of those certificates were so intangible that it would be impossible for the court to afford such holders relief through the usual modes; and that, all things considered, the offer of the stockholders to permit them to share in the plan of rehabilitating the company was a privilege of which they should be glad to avail themselves. A circular letter embodying these expressions of the court, together with a copy of the decree, was immediately mailed to each certificate holder. Thereafter a few more of them surrendered their certificates

and bought stock on the basis provided for in the decree. The remainder of the stock was later sold to outside parties at $200 per share and the proceeds of such sales were paid into the treasury of the Insurance Company.

Upon the lifting of the receivership and the return to it of its property and assets, the Great Western Life Insurance Company at once resumed its business of writing life insurance. It continued so to do until its merger with defendant, International Life Insurance Company, December 7, 1912. By the articles of consolidation the defendant assumed and agreed to pay all of the debts, liabilities and obligations of the Great Western Life Insurance Company. The claims of the latter's annuity certificate holders were specifically referred to therein and the defendant agreed to pay the annuities provided for in such certificates or refund the amounts paid for them, if they were held by this court to be valid obligations of the Great Western Life Insurance Company at the time of the merger.

The holders of the certificates who did not surrender them and accept stock in accordance with the provisions of the decree discharging the receivership took no steps whatever thereafter
336 looking to an enforcement of any claims under their certificates until about the time of the merger of the Great Western Company with defendant. During the interim between the receivership and the merger they made no demands of any kind on the former company, nor did it on its part do anything to indicate that it would not carry out the undertakings provided for in the certificates—except that it failed to pay any of the annuities. However, on February 22, 1913, the plaintiff wrote the defendant the following letter:

"International Life Insurance Company,
St. Louis, Mo.

GENTLEMEN:

As attorney for those persons, a list of whose names are hereto attached and made a part hereof, each and every of whom are the owners and holders of certain so-called annuity or investment certificates issued by the Great Western Life Insurance Company of Kansas City, Missouri, I hereby demand the performance of said contracts by said International Life Insurance Company, and the payment of each annuity due under such certificates.

As attorney for each and every of such persons, I hereby advise you that unless the terms of said so-called annuity or investment certificates are fully and completely complied with, according to the terms thereof, by said International Life Insurance Company, on or before the seventh day of March, 1913, you are to consider this as a notice that each and every of such owners and holders of said so-called annuity or investment certificates, rescind and cancel each and every of said certificates, and demand the return of all moneys paid by each and every of them to the Great Western
337 Life Insurance Company, thereon, less whatever sum or sums may have been paid to them or any of them, upon said certificates.

As attorney for each and every of said persons, I also hereby advise you that unless the demand for the return of said money is complied with on or before the eleventh day of March, 1913, that suit will be instituted to enforce the rights of my clients.

Yours very truly,

(Signed) ADRIAN F. SHERMAN."

To this letter defendant replied: "Your letter will be submitted to the Board of Directors at its next meeting, and you will be advised." Hearing nothing further from defendant, plaintiff instituted this suit April 1, 1913, as assignee of 112 of the annuity certificates.

The petition is in 112 counts, based on alleged causes of action arising out of the issuance of as many different annuity certificates. Each count in substance alleges the issuance of the annuity certificate therein described and the price paid for it; the payment thereon of a dividend of 8 per cent February 1, 1908; and the failure and refusal of the Great Western Life Insurance Company and the defendant as its successor to further perform the contract evidenced by the certificate. The assignment of the certificate and of all rights and claims growing out of it is further averred; the prayer is for the recovery of the amount paid therefor by the original holder, less the dividend paid, with interest and costs.

The answer sets up as defenses: (1) that subsequent to the issuance of the annuity certificates they were amended by mutual consent so that the sums payable thereunder became only out of the earnings of the Company and there were no such earnings; (2) that the alleged causes of action are barred by the five year statute of limitations; (3) that all rights based on the annuity cer-
338 tificates were adjudicated by the decree lifting the receivership and were thereby canceled and discharged; and (4) that plaintiff and his assignors, by standing by and acquiescing in said decree and permitting, without protest on their part, the stockholders and remaining certificate holders to effect a reorganization of the company, by paying into the treasury thereof, as capital and purchase price of the assets, sums of money aggregating more than its capital stock and equal to or in excess of the actual and market value of all the property and assets of the company, free from any claim against it on account of said annuity certificates, are now estopped from asserting any such claims.

The reply puts in issue the affirmative matters of the answer. It specifically denies that plaintiff's assignors appeared or were made parties to the proceeding which culminated in the decree which attempted to dispose of the rights of all certificate holders.

At the trial it was stipulated: that "prior to the institution of this suit the holders of the annuity certificates shown on the attached list assigned the same to the plaintiff, who thereupon became and has continued to be the owner and holder thereof." The stipulation covered all certificates now in question, except those described in counts 8, 9, 10, 11 and 12 of the petition. The five certificates referred to in those counts were originally issued to George Kumpf

and four members of his family respectively. The certificates were produced at the trial by plaintiff and each had endorsed on it an assignment in blank over the signature of the person to whom it had been issued. Kumpf, on the witness stand, identified the signatures to these assignments. He and the four members of his family were named in the list of certificate holders for whom plaintiff professed to be acting as attorney in his communication to defendant of February 22, 1913.

The cause was tried without a jury. A number of the counts of the petition were voluntarily dismissed during the progress of the trial; the court found for plaintiff on all remaining counts
339 and assessed his recovery under each at the amount that was paid for the certificate therein described, less eight per cent of such amount, with six per cent per annum interest thereon, from February 22, 1913. The aggregate amount of the judgment was $47,463.90. Defendant appeals.

Other facts will be stated in the course of the opinion, if deemed necessary to an understanding of the questions considered.

The questions raised on this appeal were passed upon by trial court in refusing declarations of law asked by defendant—appellant here. Its principal contentions are: (1) that the assignments of the annuity certificates did not operate as assignments of causes of action for money had and received; (2) that such causes of action, if they ever existed, are barred by the five years' statute of limitations; (3) that plaintiff's claims are res adjudicata under the decree of the United States Circuit Court lifting the receivership; and (4) that having acquiesced in the decree during the time of the reorganization of the Insurance Company and for four years thereafter plaintiff's assignors and plaintiff through them are now estopped from asserting that its provisions are not binding upon them.

1. It is admitted that prior to the institution of the suit the plaintiff became the "owner and holder" of all the certificates for which he seeks a recovery of the purchase money, except five. It is elementary that if the insurance company who issued the certificates had, after receiving the full purchase price, repudiated the contracts evidenced thereby on the ground that they were ultra vires, or had for any other reason or for no reason at all refused to perform such contracts without the consent of the other parties thereto, an original holder of any one of such certificates would have had the option to sue for the sums payable under his certificate, or to treat the contract as rescinded and sue for recovery of the money paid for it. (6 R. C. L. sec. 310.) If after such repudiation by the insurance company, an original holder, without having elected to rescind, had assigned his certificate, the right to recover the purchase money
therefor, as on a rescission, would have passed to the assignee
340 as an incident to the ownership of the certificate. (Parkersburg v. Brown, 106 U. S. 487.) The technical difficulty presented on the facts in proof, however, is that the right to rescind seems to have been exercised by the original holders before they assigned the certificates to plaintiff. On February 22, 1913,

through their attorney they notified defendant that they rescinded and canceled each and every said certificate and demanded the return of all moneys paid for each and every of them—unless the terms of the certificates were fully complied with on or before March 7, 1913. The defendant acknowledged the receipt of the notice but said and did nothing more. Its assent to the rescission was, therefore, implied. The contracts embodied in the certificates thereupon ceased to exist, and in lieu of such contracts there arose an obligation on the part of the insurance company to return the several sums of money paid for them. While the certificates at the times of their respective assignments represented contracts no longer in existence, yet they retained an evidential value in support of the causes of action which arose out of the cancellation of the contracts. But otherwise they were wholly worthless. It can not be supposed, therefore, that the holders of the certificates by their assignments of them to plaintiff intended to invest him with title to the papers merely, while retaining the causes of action of which they afforded in part the sustaining proof and apart from which they were wholly without value. It sems entirely clear that the assignments of the certificates were intended to effect, and did effect, assignments of the causes of action to which plaintiff is asserting title by this suit.

As to the five certificates issued to Kumpf and family, which were not included within the stipulation, appellant points out that by the terms of the certificates they were transferable only on the books of the company, whereas the transfers of these certificates were attempted to be effected through their delivery with assignments in blank endorsed on them. If the passing of the legal title to
341 the certificates as subsisting contracts was the question at issue, appellant's position would no doubt be well taken. But plaintiff on the contrary is claiming title to the causes of action that arose upon the rescission of those contracts. In this connection the rule is that any order, writing, or act which shows the intention of the owner of a chose in action to transfer it so that it will become the property of the transferee, will amount to an equitable assignment, if sustained by a valuable consideration. And it is said that the test of an equitable assignment is whether the debtor would be justified in paying the debt to the person claiming to be the assignee. (2 R. C. L. p. 614 sec. 21; Wilson v. Drainage Dist. 257 Mo. 266, 282, 283.)

The certificates in question were in the possession of the plaintiff after the rescission of the contracts evidenced by them; each had endorsed on it over the signature of the original owner an assignment in blank which recited that the assignment had been made upon a valuable consideration; and the original owners knew that plaintiff was suing in his own name to recover the money severally paid by them to the insurance company for their certificates—George Kumpf testified as a witness for plaintiff. These facts are sufficient, we think, to show an intention on the part of the original holders of the five certificates to transfer their respective causes of action to plaintiff and to estop them from hereafter asserting the contrary.

2. Appellant's contention that plaintiff's suit is barred by t
five years' statute of limitations is based on the view that the iss
ance of the annuity certificates by the insurance company was ult
vires, and that causes of action for money had and received accru
in favor of those who purchased the certificates, if at all, at the tim
respectively of the issuance of the certificates and the payments
the purchase money. But appellant's premises are not sound. Ev
if the issuance of the certificates was ultra vires, it does not follo
that a cause of action for money had and received arose in favor
the purchaser of one of them at the instant the sale was co
342 summated. The insurance company was a private, not
public, corporation; the issuance of the annuity certificates b
it was neither malum in se, nor malum prohibitum; and it coul
not therefore, refuse to perform the contracts evidenced by them o
the ground that they were ultra vires, after full performance by th
purchasers, without refunding the purchase money. (First Nationa
Bank v. Guardian Trust Co. 187 Mo. 494; Smith v. Richardson, 7
Mo. App. 422; 3 Fletcher's Enc. of Corp. secs. 1602 and 1603.
And until it did repudiate them the purchasers of the certificate
could treat them as valid and binding. (Chapman v. Dougla
County, 107 U. S. 348; Geer v. School Dist. 111 Fed. 682.) As
matter of fact the Great Western Life Insurance Company never a
any time refused to make the payments provided for in the certifi
cates on the ground that it had no power to issue them, nor did th
defendant ever raise any question in that respect until it filed it
brief in this case—doubtlessly because it knew that it could not d
so, without offering to repay the purchase money. The Great West
ern Company and the defendant as its successor simply failed to pay
the annuities called for by the certificates. The contracts repre
sented by the certificates were continuing contracts and after the in-
surance companies had failed for a considerable period of time to
perform the holders of the certificates elected to treat the contracts
as abandoned, as they had a right to do. And until they made such
election no cause of action accrued for money had and received.
(Chapman v. Douglas Co. supra.) It follows that plaintiff's several
causes of action were not barred by the statute of limitations in-
voked by defendant.

3. The decree of the Circuit Court of the United States in the
receivership proceedings provided that if any annuity certificate
holder failed to avail himself of the privilege thereby extended of
surrendering his certificate and buying stock in the insurance com-
pany for cash at twice its par value, within twenty days thereafter,
he would be barred from making claim of any kind against
343 the company or its assets, and his certificate would thereupon
be canceled. This provision, according to appellant's in-
sistence, canceled the annuity certificates that were not surrendered
according to its terms and extinguished all rights incidental to their
ownership long prior to their assignment to plaintiff. It is a matter
of grave doubt as to whether the court in any proceeding, with all
the parties before it, could have compelled the certificate holders
against their will to enter into new contractual relations under per-

alty of forfeiting rights vested under then existing contracts. But of this there can be no doubt; it could not annul the contracts and the rights incident thereto of any who had not been given notice of the proceeding or who had not been afforded an opportunity to be heard. (Windsor v. McVeigh, 93 U. S. 277.) And whether plaintiff's assignors were in court and were heard in connection with the rendition of the decree is the essence of the controversy at this point. Appellant insists that they were in court because the record recites their appearance. From this recital it is argued that they either actually appeared by counsel, or were there under the rule of class representation.

Without again setting out its language, it is sufficient to say that a reading of the decree as a whole makes it plain that Berry and Orr, the solicitors who appeared for "annuity certificate holders" in the receivership proceedings appeared for those only who had joined the stockholders in "praying leave to reorganize and rehabilitate" the insurance company, and that these constituted but little more than half of the whole number. The names of the individuals, other than F. M. Pearl, who so appeared is nowhere disclosed. There is, therefore, nothing in the record that precludes plaintiff from asserting that his assignors did not appear to the proceeding by counsel, and the evidence outside of the record just referred to conclusively shows that they did not appear either in person or by counsel.

Under the doctrine of virtual representation one or more
344 members of a class in specified instances are allowed to sue or defend in behalf of all on the theory that all the members of the class will be beneficially affected thereby. On the facts in proof in this case, however, it is not conceivable on what theory that doctrine can be invoked to make the decree discharging the receivership effectual as against the certificate holders who were not actually before the court. None of the certificate holders were parties to the original proceeding for the appointment of a receiver, either as complainants or defendants. Nor did any of them intervene therein in any proper sense of that term. Those of them who did appear during the progress of the proceeding did not ask for themselves, much less the others, any relief against any of the parties to the suit or against the assets of the insurance company. The situation was simply this: The court's jurisdiction thereto having been properly invoked, it had taken into its custody the property of the insurance company; it then had the further jurisdiction to sell the property, determine who were entitled to share in the proceeds thereof, settle priorities and make distribution accordingly. It had no other power in the premises except such as were purely incidental to these. After the court had proceeded in the exercise of this jurisdiction to a point where the receiver's report of the sale of the assets was pending before it, some of the certificate holders, who for want of a better term will be designated the reorganization certificate holders, in conjunction with some of the stockholders, appeared before the court and in substance said, according to Mr. Chappelle's affidavit: We have been conferring with the stockholders and certificate holders and we are confident that if the court will postpone confirmation of the sale and give us further time, we can raise

sufficient funds to pay the debts of the insurance company and p
it on its feet as a going concern; we ourselves have voluntarily co
tributed $120,000 to a fund to be used for that purpose, and
believe that other certificate holders with whom we have not yet h
an opportunity to confer will agree to co-operate with us.
345 postponement for ten days was thereupon granted. At t
end of that time the reorganization certificate holders aga
appeared before the court and in effect said: We constitute mo
than 50 per cent of the certificate holders and others may yet jo
us, but whether they do or not, we and the stockholders have rais
among ourselves $130,000, which we now bring into court, and,
that is a sufficient amount to rehabilitate the insurance compa
and pay its debts, we ask that you relinquish your jurisdiction ov
the property and return it to company. And that is what the cou
did. It seems obvious, therefore, that the reorganization certifica
holders in asking the court to approve their plan for rehabilitati
the company did not assume or purport to act for any one exce
themselves and such other certificate holders as voluntarily chose
come in with them, and that the only relief they sought at the han
of the court was that they and other volunteers be permitted to p
the debts of the company and thereby secure the release of its pro
erty. Assuredly they did not represent or assume to represent t
many certificate holders who were then and there refusing to su
render their certificates and pay cash for stock in the insurance co
pany on the basis of two dollars for one of par value, or to ha
anything to do with the so-called reorganization plan. These no
consenting certificate holders were never represented by any o
nor were they ever afforded an opportunity to be heard, on the pro
sition that they must give up their certificates and buy insuran
company stock, or else their certificates would be canceled anyw
Certainly, on this question they never had their day in court eith
personally or through virtual representation. The decree, therefo
in so far as it attempted to cancel their certificates and destroy t
rights incident thereto, was a nullity.

4. Appellant's next contention is that the original certifica
holders, plaintiff's assignors, having had notice of the proceedin
in the Federal Court in the Wagstaff case are bound there
346 and had no right or cause of action to transfer by assig
ment. Its position in this respect is more fully stated
the following language of its brief: "These annuity certifica
holders knew that the court was taking the position that they we
in court and that their annuity certificates were being affected
this decree. They knew therefrom that other annuity certifica
holders similarly situated were putting in new money to rehabilit
and reorganize this company, and yet they made no motion to
aside the decree or reconsider the same or any objection thereto,
appeal therefrom, and having notice of these proceedings and
the details as disclosed from this mail matter (the copy of the dec
and the circular letter embodying the court's views expressed at t
time of rendering the decree), if they undertook to assert any rig

as plaintiff is here, would have been estopped to do so." The difficulty that appellant encounters here is that the certificate holders who put in new money to rehabilitate and reorganize the company were not induced to do so by the silence of plaintiff's assignors or their apparent acquiescence in the court's views or in its decree. They had put in their money before the decree was made or the views were expressed; when they did not know whether all the certificate hoders would come in or not and regardless of whether they did or not. One hundred and thirty thousand dollars worth of the stock had been bought by them (subject of course to the release of the company's assets) before the decree was entered or its provisions known; the remaining $70,000 worth was sold for the most part to outside parties; who they were; when they bought; and whether they had any knowledge of the provisions of the decree is not shown. One thing is certain and that is that the defendant at the time it took over the business and property of the Great Western Company knew that these claims were outstanding against it. In truth they were being so vigorously pressed that the State Superintendent of Insurance compelled recognition of that
347 fact in the articles of merger. The essential elements of an estoppel such as is contended for are entirely lacking. Of course the plaintiff stands in the shoes of his assignors as to the claims assigned to him, and he is no more estopped from asserting them than they would have been.

5. Thirteen of the certificates that were assigned to plaintiff had prior to their assignment been amended by the Great Western Life Insurance Company with the consent of the respective holders so that the annuities under them were payable "out of the earnings of the company." Plaintiff made no attempt to show that there were any "earnings" out of which the annuities under these certificates could have been paid. Appellant insists that plaintiff's failure in that respect is fatal to a recovery by him under the counts based on causes of action growing out of such certificates. The position would be impregnable if this were a suit to recover the annuities. But it is a suit to recover the purchase money paid for the certificates based on a rescission of the contracts represented by them, and as already pointed out appellant consented to the rescission. The contention is without merit and is disallowed.

6. Appellant claims finally that the court improperly allowed interest on the several sums for which it awarded plaintiff a recovery. Under the statute (sec. 7179, R. S. 1909) plaintiff was entitled to interest after demand of payment, but in order for him to recover it, it was necessary for him both to allege and prove that he or his assignors had made such a demand. (Compton v. Johnson, 19 Mo. App. 88, 91.) However, the mere institution of the suit was itself a demand. (Trimble v. Railroad, 180 Mo. 574, 587.) The prayer in each count is for the recovery of the sum therein named "together with interest thereon," but there is nowhere in the petition an al-

legation of a previous demand of payment. Under such cir-
348 cumstances, the prayer should be construed, we think, as asking for interest from the time of the demand then being made through the institution of the suit. It follows that as the court could not award plaintiff a greater sum as interest than he asked (Wright v. Jacobs, 61 Mo. 19), it was in error in allowing interest from February 22, 1913, to April 1, 1913, the date on which the suit was commenced. The interest should have been computed from the latter date. By reason of the improper allowance of interest the judgment as a whole is excessive to the extent of $229.77. If the plaintiff will enter a remittitur of that sum as of the date of the judgment, within 10 days, the judgment will be affirmed; otherwise, it will be reversed and the cause remanded.

WILLIAM T. RAGLAND,
Commissioner.

Small, C., concurs & Brown, C., concurs.

Per Curiam:

The foregoing opinion of Ragland, C., is adopted as the opinion of the court, all concur, except Graves and Elder, J. J., who dissent.

349 And thereafter, and on the 6th day of December, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, in Banc, October Term, 1921.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Now at this day, comes the said respondent, by attorney, and hereby enters a remittitur herein in the sum of two hundred and twenty-nine and 77/100 dollars ($229.77), part and parcel of the judgment heretofore entered in this cause in the Circuit Court of Jackson County, in compliance with the order heretofore made by this Court on the 30th day of November, 1921. It is therefore considered and adjudged by the Court that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jackson County rendered on the 13th day of July, 1918, be affirmed, and stand in full force and effect, for the sum of forty-seven thousand two hundred and thirty-four and 13/100 dollars ($47,234.13), with interest thereon from July 13, 1918, at the rate of six per cent. per annum, and that the said appellant recover against the said respondent its costs and charges herein expended and have therefor execution.

And thereafter, and on the 10th day of December, 1921, the said appellant filed its motion for rehearing in said cause, which said motion is in the words and figures following, to-wit:

350 In the Supreme Court of Missouri, en Banc, April Term, 1920.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Appellant's Motion for Rehearing.

Comes now this day the appellant and moves the Court to grant it a rehearing of this cause for the reason that the Court has based its opinion upon a misapprehension of the facts, and has inadvertently overlooked decisive questions duly submitted by counsel, and because the opinion and decision herein are in conflict with the controlling decisions of this court and the United States Courts and the Constitution of the United States, which through inadvertence have been overlooked by the Court, all of which is hereinafter distinctly and particularly set forth.

I.

(*a*) The decision and judgment of this Court fails to give full effect, faith and credit to the records and judicial proceedings of the Circuit (now District) Court of the United States for the Western Division of the Western District of Missouri in cause #3367, entitled J. M. Wagstaff et al. vs. Great Western Life Insurance Company et al., as the same fully appears in the record before this court, and in so failing to give full effect, faith and credit to said
351 records and judicial proceedings of said Court of the United States, the decision and judgment of this court violates and contravenes the provisions of Section 1, Article 4, of the Constitution of the United States, which is as follows:

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

And this clause of the Federal Constitution requires that judgments rendered by Federal Courts, in cases such as the instant one, must be given full faith and credit in every state.

Bigelow vs. Old Dominion Copper Co., 225 U. S., 111.

(*b*) The decision and judgment of this Court violates Section 1, Article 3, of the Constitution of the United States which is as follows:

"The judicial powers of the United States shall be vested in one Supreme Court, and such inferiors courts as Congress may from time to time ordain and establish."

and also Section 2 of Article 3 of the Constitution of the United States, which provides as follows:

"The judicial power shall extend to * * * controversies between citizens of different states."

and likewise violates and contravenes the provision of Article 6 of the Constitution of the United States, which is as follows:

"Supreme Law of the Land.—This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the Supreme Law of the land and the judges in every state shall be bound thereby, anything in the Constitution or in the laws of the state to the contrary notwithstanding."

The opinion of the Court likewise violates and contravenes Section 1, Article 14, Amendments to the Constitution of the United States, which is as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, or deny to any persons within its jurisdiction the equal protection of the laws."

352 II.

The following decisive question, duly submitted by Counsel, has been entirely overlooked by the Court and not even mentioned, although one of defendant's principal contentions:

If Plaintiff's assignors were not present nor represented and were not therefore bound by the order of August 27th cancelling the annuity certificates, their claims and demands were barred by their failure to appear and present their claims and demands on or before October 1st, 1908.

The record discloses that upon the institution of the suit of Wagstaff et al. vs. Great Western Life Insurance Company et al., the Court appointed not only a receiver, but a Master in Chancery, and ordered the Master to give notice that all claims and demands held by any person against the insurance company be presented to the Master for hearing on or before October 1st, 1908. The record further discloses that in pursuance of said order the Master gave due legal notice to all persons to so present their claims and demands on or before the date mentioned. (Rec. p. 169.) On the 27th day of August, 1908, the Court made its order relative to the annuity certificates then before it, and also as a part of this order, further decreed as follows:

"Other claims now or that may hereafter be asserted not heretofore covered are passed for the future consideration of the court * * * It is further ordered and decreed that the jurisdiction of this court is fully retained, extended and continued from time to

time and until this cause is finally concluded over all subjects—the matter covered by any pleading now on file or that later on may be filed and over all parties whose names are now on the record and such other party or parties as may later on be brought into court or who may come into same by any pleading." (Rec. p. 71-72.)

The record further discloses (Rec. p. 239) that the jurisdiction of the Court by the order last mentioned for the purpose of claims, demands or any other matter or thing, was continued until the 14th of October, 1912, when the jurisdiction was terminated by an order of the Court, it then appearing that all matters pertaining to
353 the company had been adjudicated.

The opinion of the Court overlooks the fact that the plaintiff, by this action, has placed himself voluntarily in the position and status of a creditor, and is suing for money had and received, a claim and demand that could and should have been made under the order to present claims before October 1st, 1908. This is identically the same status in which he placed himself when the proceedings of the Federal Court were pending and when he as a certificate holder appeared in that Court and asked for and obtained a judgment in his favor for money had and received.

The opinion overlooks the effect of this judgment upon these certificate holders as then holders of claims and demands. The Court unquestionably had jurisdiction of all claims and demands against the company, and fully exercised that jurisdiction. On August 27th it disposed of all claims and demands of certificate holders who were then in Court, either actually or through class representation, and unquestionably the judgment as to those is binding, and it expressly at that time continued its jurisdiction for the purpose of all other claims and demands of all persons whomsoever. On October 1st, 1908, which was the final day fixed for the presentation of claims and demands, that Court had full and complete jurisdiction of the entire case, and such creditors and certificate holders were compelled to present their claims not later than said October 1st. Those who had presented their claims had them entirely adjudicated, and those who had not presented their claims were required to do so by October 1st or be forever thereafter barred. The holders who assigned to plaintiff belonged of necessity to one or the other of these classes, and their claims were either adjudicated adversely to them by the order of the Court, or were forever barred by reason of their failure to present them. It was their mandatory duty to present them and if dissatisfied with the manner in which they were determined to seek their remedy and relief by appeal.

354

III.

The record of the United States Court in the Wagstaff case expressly recites as follows:

"Appearing in person, F. M. Pearl, and other stockholders of the Great Western Agent Company, and annuity certificate holders of

the Great Western Life Insurance Company who were similarly situated, appearing by V. P. Waggoner and James W. Orr. (Rec. p. 66.)

and again (Rec. p. 139):

"The annuity certificate holders of the Great Western Life Insurance Co. appearing by E. O. Barry and James W. Orr their solicitors, and A. F. Sherman appearing for himself and certain other annuity certificate holders."

In fact, at several places in the record of the proceedings in that Court there were entries as to the appearance of annuity certificate holders through E. O. Barry, V. P. Waggoner, and James W. Orr, and other annuity certificate holders appearing through A. F. Sherman. The opinion of the Court entirely overlooks that there is not one syylabel of testimony in the record that the certificate holders who assigned their certificates to the plaintiff were not appearing in the Federal Court through either Mr. Barry, Mr. Waggoner, or Mr. Orr. Neither of these attorneys testified and no one else testified as to whom these parties represented. The plaintiff in this case testified that he did not represent the holders who later assigned to him, but the record entry discloses that he was representing certificate holders other than those represented by Mr. Barry, Mr. Waggoner, and Mr. Orr. There is nothing whatever in the record to show what certificate holders appeared through Mr. Barry, Mr. Waggoner, and Mr. Orr, and the opinion of the Court overlooks the principal of law that in a collateral attack upon a judgment of a court of record every presumption in favor of the regularity, finality and verity of the judgment is indulged, and that in the absence of a showing to the contrary, it will be presumed that all parties to an order or a decree who are necessary to make it final and com-
355 plete were present and were included in the general terms of the record entry as to those present. In the instant case the opinion not only is in conflict with the decisions which announce and indulge this presumption, but is predicated upon an unfounded presumption directly to the contrary, and is in conflict with:

Howard vs. Thornton, 50 Mo. 291.
Talbot vs. Rowe, 171 Mo. l. c. 433.
Price vs. Association, 101 Mo. 107.
Bearden vs. Miller, 54 App. 199.
Cyc. Vol. 29 p. 1085, 1079.

VI.

The opinion of the Court overlooks the following pertinent and decisive facts, and questions of law decision of the case, to-wit: that each and every investor in the annuity certificates issued by the insurance company invested his money in a community fund and was to receive his returns from a community fund which was to be proportioned equally according to amount invested, among each and all of said investors and certificate holders. The status of each and all in both law and fact was identical. They all invested under the

same circumstances, the same contract, into the same fund; acquired identically the same rights, and nothing could be done by either party affecting the rights of one that did not in the same manner affect the rights of all. They truly and accurately created and belonged to one class.

The record also shows that there were several hundred members of this class, and that the holders of these certificates were located at widely distant points and in different jurisdictions and that 85% (eighty-five) were present in court. Without in any manner indicating why, under these circumstances, this was not a case of class or virtual representation, the opinion of the Court disposed and dismissed this principal and earnest contention by merely saying that it is not conceivable on what theory that doctrine can be invoked.

356 We respectfully urge that in view of the facts showing this to be a case of class representation, the contention and proposition should not be thus lightly dismissed. It is a well established principal of law that to the general rule that only persons who are actually parties to an action are bound by a judgment, there is an exception of equal authority with the rule itself, it being the case of absent parties who belong to the same class and have the same interests as those who are present. If the parties who are present have the same interest and rights as those who are absent, and that interest and right is so present in court as to enable the Court to fully adjudicate the question which it presents, such is sufficient and the absent parties are bound by the judgment the same as if actually present. In such cases the absent ones will be regarded as having been represented by those present. This is a rule and doctrine founded on convenience and necessity, and without its application it would be impossible in many cases, as in the present case to finally adjudicate and dispose of a situation, and to leave unshackled, property that is involved. The opinion is in conflict with the following:

Smith vs. Swormstedt, 16 Howe, 288.
Hodges vs. Nalty, 104 Wisc. 164.
Fitz vs. Jones, 59 Am. Decisions, 708.
Ruling Case Law, Vol. 20, Sec. 9 p. 669.
Ruling Case Law, Vol. 20, Sec. 11 p. 672.
Lilly vs. Tobin, 103 Mo. 477.
Ruling Case Law, Vol. 15, Sec. 500, P. 1025.
Accard vs. Baty, 244 Mo. 1. c. 132.

V.

(*a*) The opinion of the Court expressly finds that in point of fact the election on the part of the original holders of the certificates in question to rescind the illegal contract and thereby sue for money had and received, took place prior to their assignment to this plaintiff.

(*b*) The opinion of the Court further expressly finds in point of law that as quickly as such contracts were rescinded by the
357 original holders, the certificates and contracts themselves created and possessed no rights that could be made the basis

of a cause of action, and that they then possessed no value whatsoever, except that they might, in some action not based upon them, be used as mere evidence of the fact that money had been paid to the party issuing them. In other words, the Court says that after such a rescission any and all causes of action which might have been predicated upon the certificates were abandoned, waived and forfeited.

(c) The opinion of the Court recognizes the principle that the rights created by a contract and the rights arising from a rescission or breach of a contract are entirely separate and distinct and of a thoroughly different nature and origin, and that the assignment of the one class does not of itself assign the other.

The opinion, however, avoids the force and effect of such principles and doctrines of law by saying that in the instant case the assignment was of such a character and made under such conditions as to constitute an assignment of the cause of action arising from the rescission. This finding of fact is based solely upon the theory that because at the time the assignments were made the certificates themselves possessed no substantial value, the rescission having already taken place, and that it will be presumed that the vendee did not have assigned to himself something of no substantial value.

We respectfully urge that this conclusion of fact is not well founded, and that it is at variance with both the record disclosures of fact and the law governing such matters. In the first place the Court overlooks the fact that the record does not show that the assignee paid for the assignment a consideration of any greater value than the mere paper on which the certificates were printed, and of no greater value than a speculator would be willing to pay for a gambler's chance to recover on the certificates themselves. The only evidence in the entire record as to what constituted the con-
358 sideration for any of these assignments is the testimony of one witness, which shows that he gave, without any consideration whatever, his certificates to the plaintiff.

The Court also overlooks the fact that the assignee of these certificates was a practising lawyer, who on at least two occasions viz: when the contract of reinsurance was entered into by the defendant and the Great Western Life Insurance Co., and when he as attorney for the certificate holders wrote a letter to the defendant demanding compliance with the terms of the certificates, was insisting that the certificates themselves were valid and created binding contract obligations.

The Court also overlooks the fact that in his letters to the defendant he recognizes the two separate and distinct rights and causes of action, one being rights and cause of action arising from the certificates as valid contracts, and the other being rights and a cause of action arising from a rescission of the contracts. Notwithstanding that the plaintiff was a lawyer, and before taking his assignments recognized the two distinct classes of rights and causes of action, when he took his assignments he took them in words and figures expressly and clearly limited to an assignment of the rights and causes

of action arising on the certificates as valid contracts, and did not even purport to take an assignment of the rights and causes of action arising from a rescission of such contract. The assignment that he took was in words and figures of the formal stereotyped assignment printed on the back of the certificate, and which clearly was prepared with a view to and limiting the assignment to the certificate of contract itself, as distinguished from rights which might arise from a prior rescission of the contract. The Court in its opinion says:

359 "It cannot be supposed, therefore, that the holders of the certificates by their assignments of them to plaintiff intended to vest him with title to the papers merely."

An examination of the record will disclose that the holders of numerous certificates made assignments, although such assigning holders were direct parties to the Wagstaff judgments, and although the plaintiff himself conceded that such assignments carried with them nothing but a paper and accordingly dismissed his action as to such persons. The assignments of the last mentioned certificates show that the holders assigned and the plaintiff accepted certificates which carried with them nothing of value except the mere paper. This part of the opinion is predicated upon purely a supposition, and this supposition is in the face of law, and contrary to the facts, as disclosed by the record.

Besides this, it is encumbent upon a plaintiff to establish by proof his cause of action, and his right to maintain the same, and a court is not justified in supposing or presuming the existence of his cause. The assignments in these cases clearly and expressly recite that they assigned merely the title to the certificates, and there is nothing in the record to disclose an intention to assign other and different rights. This is an action in law, and even if it were the intention of the parties to make such an assignment, when they in point of fact did not do it, the plaintiff could not rely upon such mere intention in an action at law, but is bound by the assignment actually made and stated.

Respectfully submitted,

COOPER, NEAL & WRIGHT,
CHAS. G. REVELLE,
Attorneys for Appellant.

And thereafter, on the 17th day of December, 1921, the said respondent filed his reply to the applicant's motion for a rehearing in said cause.

360 And thereafter, and on the 30th day of December, 1921, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, in Banc, October Term, 1921.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Now at this day, the Court having considered and fully understood the motion heretofore filed by the said appellant for a rehearing herein, doth order that said motion be, and the same is hereby overruled.

361 In the Supreme Court of Missouri, en Banc.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Petition for Writ of Error.

The petition of the above-named International Life Insurance Company, respectfully shows:

(1) On December 30, 1921, the Supreme Court of Missouri rendered and entered a final judgment in the above-entitled cause in favor of the respondent, Adrian F. Sherman, and against petitioner, in which, and in the proceedings had in this cause, certain errors were committed to the prejudice of petitioner, all of which appear in detail from the Assignment of Errors filed herewith.

(2) The said Supreme Court is the highest court of law or equity in the State of Missouri and the highest court in said State in which a decision of this cause could be had.

(3) This action was instituted against petitioner by the said Adrian F. Sherman as the assignee of sundry holders of so-called annuity certificates and investment certificates issued by the
362 Great Western Life Insurance Company. The action is in assumpsit to recover the cost or price paid for such certificates. Subsequent to the issuance of said certificates and prior to the institution of this action, the Great Western Life Insurance Company merged with petitioner under the laws of the State of Missouri governing the merging of life insurance corporations.

(4) At the trial in the Circuit Court of Jackson County, Missouri, he defense was interposed by petitioner, by answer and proof, that he final decree and judgment rendered by the United States Circuit now District) Court for the Western Division of the Western Dis- rict of Missouri, in cause No. 3367, entitled J. M. Wagstaff, et al. s. Great Western Life Insurance Company, et al., was a bar to this ction and that the claims or causes of action sued on herein were fully and finally determined and adjudicated by said court adverse o the plaintiff and his said assignors, who were parties to said suit. At every stage of this action in this defense of res judicata or former adjudication was interposed and urged as a bar. The record of the said United States Court affirmatively shows that said Court had jurisdiction of the parties and of the subject matter here involved. Nevertheless, the trial court held and decided that the said judgment and decree of said United States Court was not a bar to this action or to the claims or causes of action sued on herein and gave judgment for plaintiff against petitioner. The trial court refused to give declarations of law numbered 2, 3 and 5 requested by petitioner, reading as follows:

II.

The court declares the law to be that the decree and judgment of the Circuit Court of the United States for the Western Di-
363 vision of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company and others, is binding and conclusive upon the plaintiff, and plaintiff is thereby barred from maintaining this action and the judgment herein must be for and in favor of the defendant.

III.

The court declares the law to be that if the plaintiff acquired the certificates described in the petition subsequent to the decree rendered by the United States Circuit Court for the Western Division of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company, et al., and with knowledge of such decree, then he cannot recover in this case, and the finding and judgment must be for and in favor of the defendant.

V.

The court declares the law to be that if the holders of certificates other than those mentioned and described in the petition, contributed money as provided for in the decree of the United States Circuit Court for the Western Division of the Western District of Missouri in the case of Wagstaff against the Great Western Life Insurance Company, et al., for the purposes mentioned in said decree, and in reliance upon the force, effect and validity thereof, and that the plaintiff and the then holders of the certificates mentioned in the petition, knew of such payments of money and failed and neglected

to protest or object thereto, but said or did nothing, then they are estopped from questioning the force, effect and validity of said decree, and plaintiff cannot recover and the judgment herein must be for and in favor of the defendant.

The defense mentioned was urged by petitioner in its motion for a new trial and was likewise presented to the Supreme Court of Missouri and urged by assignment of errors, briefs and argument, and finally in petitioner's motion for a rehearing filed in said Supreme Court.

(5) The Supreme Court of Missouri, by its decision and judgment herein, affirmed the aforesaid action of the trial court and the judgment rendered by it, and thereby and by its decision and
364 judgment, has failed to give full effect, faith and credit to the records and judicial proceedings of said United States Circuit Court in violation and contravention of Section 1 of Article IV of the Constitution of the United States, and thereby likewise contravened and violated the Acts of the Congress of the United States enacted under the authority of Section 2 of Article III of the Constitution of the United States relating to the jurisdiction of the Courts of the United States in controversies between citizens of different states, and in this connection, petitioner respectfully submits, that the said Supreme Court, by its said judgment and decision, has, in effect, held invalid, or failed to observe, the said acts of Congress and has ignored and violated the provision of Article VI of the Constitution of the United States that the said constitution and the laws of the United States made in pursuance thereof are the supreme law of the land, for that, petitioner respectfully submits, the Acts of Congress aforesaid, enacted in pursuance of Section 2 of Article III of the Constitution of the United States, are valid laws, binding upon all courts and judges in the State of Missouri, and thereunder the said United States Circuit Court had jurisdiction to hear and determine the said suit of Wagstaff against Great Western Life Insurance Company, involving the same parties and subject matter as are involved herein, and its judgment and decree therein was valid, binding and conclusive upon the parties and, as well, upon the courts and judges of the State of Missouri, and is therefore res judicata of and a bar to the claims and causes of action sued on herein. And under the plea
and defense aforesaid petitioner claimed a right, privilege or
365 immunity under the Constitution of the United States and under the authority of said United States Circuit Court exercised under the United States and the Constitution and laws thereof, and which was erroneously denied, as aforesaid, by said Supreme Court.

Wherefore, petitioner, the International Life Insurance Company, prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, to the end that the record in said matter may be removed into the Supreme Court of the United States and that the errors complained

of by petitioner may be there examined and corrected and said judgment reversed and petitioner discharged without day.

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys for Petitioner.

COOPER, NEEL & WRIGHT,
Of Counsel.

The Writ of Error as prayed for in the foregoing petition is hereby allowed this 24 day of February, A. D. 1922, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of Two Thousand Dollars ($2,000.00).

Dated at the City of Jefferson in the State of Missouri, this 24 day of February, A. D. 1922.

JAMES T. BLAIR,
Chief Justice of the Supreme Court of the State of Missouri.

365½ [Endorsed:] Adrian F. Sherman, Respondent, vs. International Life Insurance Company of St. Louis, Missouri, Appellant. Petition for Writ of Error. Allowed, 2-24-22. James T. Blair, C. J. Filed Feb. 24, 1922. J. D. Allen, Clerk Supreme Court.

366 In the Supreme Court of the State of Missouri, October Term, 1921.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY, Appellant.

Memorandum in Support of Petition for Writ of Error.

Phœnix Fire & Marine Insurance Co. v. Tennessee, 161 U. S. 174; 40 Law ed., 660.

"The judgment offered in evidence was the judgment of a state court, and the refusal to accord to it all that was claimed for it in the nature of an estoppel by counsel for plaintiffs in error was, in any event, no more than a refusal to give to a judgment of one of its own courts that degree of force as evidence which it was by the general law entitled to. In no event was it anything other than error committed by the court below in regard to the general law or rule of evidence, which has nothing of a Federal question connected with it. It is entirely different from the case of a refusal of a state court to give the proper effect to a judgment of a court of the United States. If a state court erroneously refuse to give such weight and effect to a judgment of one of the courts of the United States a Federal ques-

tion arises, which is within the jurisdiction of this court to review upon writ of error to the supreme court of the state. Crescent City L. S. L. & S. H. Co. v. Butchers' Union, S. H. & L. S. Co., 120 U. S. 141 (30:614). Although no higher sanctity or effect can be claimed for the judgment of a Federal court than is due under the same circumstances to judgments of state courts in like cases (Dupasseur v. Rochereau, 88 U. S. 21 Wall. 130, 135 (22:588, 590); Embry v. Palmer, 107 U. S. 3 (27:346), yet in the case of a judgment of the former court the Constitution provides that full faith and credit shall be given it, and whether it has or has not been given it by a state court is a Federal question, while if the state court erroneously decides a question of law regarding the weight to be given one of its own judgments in its own courts and among its own citizens, that error is not subject to review by this court, because it constitutes no Federal question."

367 Des Moines Navigation & R. R. Co. v. Iowa Homestead Company, 123 U. S. 552; 31 Law ed. 202.

"The case was taken to the Supreme Court of the State on appeal, and among the errors assigned there was this:

'The court erred in holding that plaintiff was not estopped from prosecuting this suit by the former adjudication in the former suit of the Iowa Homestead Company against the Des Moines Navigation and Railroad Company and others.'

We cannot look upon the reason given by the court below for not considering the question of prior adjudication as sufficient for avoiding the decision of a controlling federal question fairly presented by the pleadings, proofs, and assignment of errors, and necessarily involved in the determination of the case. That question stood in the very front of the litigation, and, if decided in favor of the Navigation and Railroad Company, ended the whole matter. To give a judgment the other way, without considering it, was simply to ignore one of the most important elements of the case as it stood in the record. There can be no escape from this conclusion."

Crescent City Live Stock, etc. Co. v. Butchers' Union Slaughter House, etc. Co., 120 U. S. 141; 30 Law ed. 614:

"This is a writ of error bringing into review a judgment of the Supreme Court of the State of Louisiana, reported in 37 Louisiana Annual Reports, 874. The Federal question arising upon the record presented for our consideration is, whether the Supreme Court of Louisiana in its determination of the case gave due effect to a certain decree of the Circuit Court of the United States for the Eastern District of Louisiana, in a previous litigation between the same parties. * * *

It must therefore be conceded that the sole question to be determined is, Did the Supreme Court of Louisiana, in deciding against the plaintiffs in error, give proper effect to the decree of the Circuit Court of the United States, subsequently reversed by this court?

It is argued by counsel for the defendant in error that this does
t embrace any federal question; that the effect to be given to a
dgment or decree of the Circuit Court of the United States sitting
Louisiana by the courts of that State is to be determined by
e law of Louisiana, or by some principle of general law as to which
e decision of the state court is final; and that the ruling in question
d not deprive the plaintiffs in error of 'any privilege or immunity
ecially set up or claimed under the Constitution or laws of the
nited States'. But this is an error. The question whether a state
court has given due effect to the judgment of a court of the
38 United States is a question arising under the Constitution and
laws of the United Sates, and comes within the jurisdiction of
ne federal courts by proper process, although, as was said by this
ourt in Dupasseur v. Rochereau, 88 U. S. 21 Wall. 130, 135 (22:
88, 590): 'No higher sanctity or effect can be claimed for the judg-
ient of the Circuit Court of the United States rendered in such a
ase, under such circumstances, than is due to the judgments of the
tate courts in a like case and under similar circumstances.' Embry
. Palmer, 107 U. S. 3 ((27:346). It may be conceded, then, that
he judgments and decrees of the Circuit Court of the United States,
itting in a particular State, in the courts of that State are to be
ccorded such effect, and such effect only, as would be accorded in
similar circumstances to the judgments and decrees of a state tri-
bunal of equal authority. But it is within the jurisdiction of this
court to determine, in this case, whether such due effect has been
given by the Supreme Court of Louisiana to the decrees of the Cir-
cuit Court of the United States here drawn in question."

Tullock v. Mulvane, 184 U. S. 497, 46 Law ed. 657:

"A reference to some of the decided cases concerning what constitutes a claim of immunity arising from an authority exercised under the United States will serve at once to refute the contention that no Federal question is here presented.

In Dupasseur v. Rochereau, 21 Wall. 130, 22 L. ed. 588, the question for decision was whether a state court had given due effect to a decree of a court of the United States, and it was asserted that the contention that it had (not) presented no Federal question. Speaking through Mr. Justice Bradley, the court said (p. 134, L. ed. p. 590):

'Where a state court refuses to give effect to the judgment of a court of the United States rendered upon the point in dispute, and with jurisdiction of the case and the parties, a question is undoubtedly raised which, under the act of 1867, may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United States, establishing the circuit court and vesting it with jurisdiction; and hence it would be within the judicial power of the United States, as defined by the Constitution; and it is clearly within the chart of ap-

pellate power given to this court, over cases arising in and decided by the state courts."

In this case Mr. Justice White collates a number of authorities on this proposition.

Cumberland Glass Mfg. Co. v. DeWitt, 237 U. S. 447, 59 L. ed. 1042:

369 "Summing up the defenses made in the State court, the Maryland court of appeals said (120 Md. 386): 'The defendant interposed three pleas—first, that it did not commit the wrong alleged; secondly, limitations; thirdly, res judicata, based upon certain proceedings had in the United States district court for Maryland, and particularly set out in the pleas.'

The Federal question, which is the basis of jurisdiction here, arises upon the plea of res judicata to which a demurrer was sustained in the Maryland court of original jurisdiction, which judgment was affirmed by the court of appeal. This presents a Federal question because the plea of former judgment in a Federal Court adjudicating a right of Federal origin asserts a right which, if denied, made the case reviewable here under par. 709, Revised Statutes, par. 237, Judicial Code (36 Stat. at L. 1156, chap. 231, Comp. Stat. 1913, par. 1214). Deposit Bank v. Frankfort, 191 U. S. 499, 48 L. ed. 276, 24 Sup. Ct. Rep. 154."

Respectfully submitted,

CHAREL G. REVELLE,
COOPER, NEEL & WRIGHT,
Attys. for International Life Insurance Co.

369½ [Endorsed:] Adrian F. Sherman, Respondent, vs. International Life Insurance Company, Appellant. Memorandum in Support of Petition for Writ of Error. Filed Feb. 24, 1922. J. D. Allen, Clerk Supreme Court.

370 In the Supreme Court of Missouri, en Banc.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Assignment of Errors.

Now comes the International Life Insurance Company, Plaintiff in Error, in connection with its petition for a writ of error herein, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Missouri in this cause, there is manifest error in this, to-wit:

First. The decision and judgment of the Supreme Court of Missouri violates Section 1 of Article IV of the Constitution of the United States in that the said Supreme Court failed to give full faith and credit to the record and judicial proceedings of the Circuit (now District) Court of the United States for the Western Division of the Western District of Missouri, in cause No. 3367 entitled J. M. Wagstaff, et al., vs. Great Western Life Insurance Company, et al.

Second. The decision and judgment of the Supreme Court
371 of Missouri violates Section 2 of Article III of the Constitution of the United States in that it ignores and, in effect, denies the jurisdiction of the said United States Circuit Court to render the final decree and judgment which was rendered by it in said cause of Wagstaff vs. Great Western Life Insurance Company, adjudicating and determining all the issues of fact and law there pending.

Third. The decision and judgment of the Supreme Court of Missouri fails to observe and violates and, in effect, holds invalid the laws of the United States conferring upon said United States Circuit Court the jurisdiction to entertain, hear and determine suits in equity involving controversies between citizens of different states.

Fourth. The Supreme Court of Missouri erred in deciding that said United States Circuit Court did not have jurisdiction, in the said suit of Wagstaff vs. Great Western Life Insurance Company, of the subject matter and parties involved therein and herein, and that said decree and judgment so rendered was not valid, binding and conclusive in accordance with its terms.

Fifth. The Supreme Court of Missouri erred in deciding that the said decree and judgment rendered by said United States Circuit Court was not res judicata of the claims and causes of action sued on herein, and a bar thereto, and a former adjudication thereof.

Sixth. The Supreme Court of Missouri erred in not deciding that the failure of the defendant in error or his assignors to file or present their claims, here involved, to the Special Master or to the said United States Circuit Court as required by the orders of said Court, barred, foreclosed and estopped defendant in error from maintaining this action.

Seventh. The Supreme Court of Missouri erred in affirm-
372 ing the action of the trial court in refusing to give Declaration of Law No. 2 requested by plaintiff in error, reading as follows:

II.

"The court declares declares the law to be that the decree and judgment of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in the case of Wagstaff

against the Great Western Life Insurance Company and others, is binding and conclusive upon the plaintiff, and plaintiff is thereby barred from maintaining this action and the judgment herein must be for and in favor of the defendant."

Eighth. The Supreme Court of Missouri erred in affirming the action of the trial court in refusing to give Declaration of Law No. 3 requested by plaintiff in error, reading as follows:

III.

"The Court declares the law to be that if the plaintiff acquired the certificates described in the petition subsequent to the decree rendered by the United States Circuit Court for the Western Division of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company et al., and with knowledge of such degree, then he cannot recover in this case, and the finding and judgment must be for and in favor of the defendant."

Ninth. The Supreme Court of Missouri erred in affirming the action of the trial court in refusing to give Declaration of Law No. 5 requested by plaintiff in error, reading as follows:

"The court declares the law to be that if the holders of certificates other than those mentioned and described in the petition, contributed money as provided for in the decree of the United States Circuit Court for the Western Division of the Western District of Missouri in the case of Wagstaff against the Great Western Life Insurance Company, et al., for the purposes mentioned in said decree and in reliance upon the force, effect and validity thereof and that
373 the plaintiff and the then holders of the certificates mentioned in the petition, knew of such payments of money and failed and neglected to protest or object thereto, but said or did nothing, then they are estopped from questioning the force, effect and validity of said decree, and plaintiff cannot recover and the judgment herein must be for and in favor of the defendant."

Tenth. The Supreme Court of Missouri erred in overruling and deciding adversely to the following grounds of error and each of them, assigned and urged by petitioner in said Supreme Court:

I.

The court erred in not sustaining defendant's demurrer to the evidence.

II.

The court erred in not holding that the decree in the case of Wagstaff against the Great Western Life Insurance Company bound the plaintiff in this case and his assignors, and the court erred in not holding that said decree was a complete defense to defendant in this case.

III.

The court erred in not holding that the plaintiff was estopped from denying that he was bound by the decree in the case of Wagstaff against the Great Western Life Insurance Company.

IV.

The court erred in not holding that the assignors of plaintiff were bound by the decree in the case of Wagstaff against the Great Western Life Insurance Company and that said assignors had no right or cause of action to transfer by assignment.

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys for Petitioner, International Life Insurance Company, Appellant.

COOPER, NEEL & WRIGHT,
Of Counsel.

373½ [Endorsed:] Adrian F. Sherman, Respondent, vs. International Life Insurance Company of St. Louis, Missouri, Appellant. Assignment of Errors. Filed Feb. 24, 1922. J. D. Allen, Clerk Supreme Court.

374 (*Copy of Bond.*)

In the Supreme Court of the United States.

INTERNATIONAL LIFE INSURANCE COMPANY, a Corporation, Plaintiff in Error,

vs.

ADRIAN F. SHERMAN, Defendant in Error.

Know all men by these presents, That we, International Life Insurance Company, a corporation, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto Adrian F. Sherman, and his assigns, in the sum of Two Thousand ($2,000) Dollars, to be paid to said obligee, their successors, representatives and assigns, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly, and severally by these presents.

Sealed with our seals and dated this 23rd day of February A. D. 1922.

Whereas, the above named, International Life Insurance Company, the plaintiff in error, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment heretofore rendered in the above entitled cause by the Supreme Court of the State of Missouri.

Now therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

INTERNATIONAL LIFE INSURANCE COMPANY, A CORPORATION,
By MASSEY WILSON,
President.

375 Attest.
[SEAL.] W. F. GRANTGES.
Secretary.

AMERICAN SURETY COMPANY OF NEW YORK,
By ADOLPH A. JANIS,
Resident Vice-President.

Attest:
[SEAL.] OSCAR L. KINCHCLOE,
Resident Assistant Secretary.

I hereby approve the foreging bond and surety this 24th day of February, A. D. 1922.

JAMES T. BLAIR,
Chief Justice Supreme Court of the State of Missouri.

The above bond satisfactory.

THAD B. LANDON,
ATWOOD, WICKERSHAM, HILL & POPHAM,
Attys. Deft. in Error.

376 In the Supreme Court of Missouri, en Banc.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY OF ST. LOUIS, MISSOURI, Appellant.

Order.

The above entitled matter coming on to be heard upon the petition of the appellant for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the

Supreme Court of the United States the questions presented by the record in said matter:

It is ordered that a writ of error be and is hereby allowed to this Court from the Supreme Court of the United States, the writ of error to act as a supersedeas, and that the bond presented by said petitioner in the sum of Two Thousand ($2,000.00) Dollars with American Surety Company of New York, as surety thereon, be and the same is hereby approved.

Done at the City of Jefferson in the State of Missouri, this 24th day of February, A. D. 1922.

JAMES T. BLAIR,
Chief Justice of the Supreme Court of the State of Missouri.

376½ [Endorsed:] Adrian F. Sherman, Respondent, vs. International Life Insurance Company of St. Louis, Missouri, Appellant. Order. Filed Feb. 24, 1922. J. D. Allen, Clerk Supreme Court.

377 UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Missouri:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Supreme Court of the state of Missouri, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Adrian F. Sherman and International Life Insurance Company, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said International Life Insurance Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,

378 together with this writ, so that you have the same at Washington on the 28th day of March, 1922, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause

further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 24 day of February, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of the United States District Court of Missouri, Central Division, Western District.]

EDWIN R. DURHAM,
Clerk of the United States District Court
for the Western District of Missouri.
By F. J. FROMME,
Deputy Clerk.

The above writ is allowed by

JAMES T. BLAIR,
Chief Justice of the Supreme Court of the State of Missouri.

378½ [Endorsed:] International Life Insurance Company, Plaintiff in Error, vs. Adrian F. Sherman, Defendant in Error. Writ of Error. Filed Feb. 24, 1922. J. D. Allen, Clerk Supreme Court.

379 In the Supreme Court of the United States.

INTERNATIONAL LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

ADRIAN F. SHERMAN, Defendant in Error.

UNITED STATES OF AMERICA:

To Adrian F. Sherman, Greetings:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the state of Missouri, wherein International Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James T. Blair, chief justice of the Supreme Court of the state of Missouri, this 24 day of February, in the year of our Lord one thousand nine hundred and twenty-two.

JAMES T. BLAIR,
Chief Justice of the Supreme Court of the State of Missouri.

We hereby acknowledge due service of the within citation this 25th day of February, A. D., 1922.

THAD B. LANDON,
WM. THOMPSON,
ATWOOD, WICKERSHAM, HILL &
———,
Per O. S. HILL,
Attorneys for Defendant in Error.

379½ [Endorsed:] International Life Insurance Company, Plaintiff in Error, vs. Adrian F. Sherman, Defendant in Error. Citation. Filed Feb. 27, 1922. J. D. Allen, Clerk Supreme Court.

380 In the Supreme Court of the State of Missouri, October Term, 1921.

No. 21220.

ADRIAN F. SHERMAN, Respondent,

vs.

INTERNATIONAL LIFE INSURANCE COMPANY, Appellant.

Præcipe upon Writ of Error.

To the Clerk of the Supreme Court of Missouri:

You will prepare in the above entitled cause a complete transcript of the record for the plaintiff in Error, International Life Insurance Company, to be sent to the Supreme Court of the United States, which transcript shall include the writ of error, citation upon said writ and the return or acknowledgment of service, the supersedeas bond, the assignment of errors, the petition for writ of error, the opinion of the Supreme Court, all record entries made by the Supreme Court and the complete abstract of the record filed by appellant, and in fact all of the records, proceedings, abstracts and papers on file, so that the transcript sent by you to the Supreme Court of the United States will cover, include and embrace all of the records and proceedings in this cause.

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys for International Life Insurance Company, Plaintiff in Error.

380½ [Endorsed:] No. 21220. Adrian F. Sherman, Respondent, vs. International Life Insurance Company, Appellant. Præcipe upon Writ of Error. Filed Feb. 24, 1922. J. D. Allen, Clerk Supreme Court. Cooper, Neel & Wright, Kansas City, Missouri.

381 STATE OF MISSOURI, *set:*

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, in obedience to the mandate of the within writ of error, herewith transmit to the Honorable Supreme Court of the United States a full, true and complete transcript of the record and proceedings in the cause of Adrian F. Sherman, Respondent, vs. International Life Insurance Company of St. Louis, Missouri, Appellant, No. 21,220, as fully as called for by the within præcipe for transcript, and as fully as the same appear of record and on file in my office; to which said transcript are attached, and made part thereof, the petition for a writ of error, memorandum in support of said petition, assignment of errors, bond (copy of), order allowing writ of error, writ of error, citation, and præcipe for transcript.

In testimony whereof, I hereunto set my hand and affix the seal of said Supreme Court of the State of Missouri, at my office in the City of Jefferson, State aforesaid, this first day of March, 1922.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
Clerk of the Supreme Court of the State of Missouri.

Endorsed on cover: File No. 28,752. Missouri Supreme Court. Term No. 797. International Life Insurance Company, plaintiff in error, vs. Adrian F. Sherman. Filed March 6th, 1922. File No. 28,752.

Office Supreme Court,
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WM. R. STANSB
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No. 295

IN THE

Supreme Court of the United States

INTERNATIONAL LIFE INSURANCE COMPANY,
PLAINTIFF IN ERROR,

VS.

ADRIAN F. SHERMAN, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Counsel for Plaintiff in Error.

COOPER, NEEL & WRIGHT,
Of Counsel.

(No. 28752.)

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No. 797.

IN THE

Supreme Court of the United States

INTERNATIONAL LIFE INSURANCE COMPANY,
PLAINTIFF IN ERROR,

VS.

ADRIAN F. SHERMAN, DEFENDANT IN ERROR.

STATEMENT.

I.

This case is here on a writ of error allowed by the Chief Justice of the Supreme Court of Missouri. After the Transcript of the Record was filed, plaintiff in error, as petitioner, filed a petition in this court for a writ of certiorari, with a brief in support thereof. Defendant in error filed a motion to dismiss the writ of error and also filed objections to the granting of the writ of certiorari. No order has been made finally disposing of either of these matters, but the motion to dismiss the writ of error and the petition for a writ of certiorari have been taken with the case on the merits. If the court shall decide that certiorari is the proper remedy, it will, we submit, treat the Transcript of the Record on file as a return to the writ, conformably to what we believe to be the approved practice.

II.

On January 18, 1918, defendant in error recovered a judgment against plaintiff in error in the Circuit Court of Jackson County, Missouri, at Kansas City, for $47,463.90, representing,

with interest, the purchase price paid by the assignors of defendant in error, for sundry annuity certificates, issued in the year 1908, by the Great Western Life Insurance Company, which company was several years after the issuance and sale of said certificates, absorbed by plaintiff in error under the laws of Missouri governing the merger of life insurance companies.

Upon appeal the judgment was affirmed by the Supreme Court of Missouri (R. 356). The petition upon which the case was tried contains one hundred and twelve counts, forty-one of which were dismissed, judgment being rendered upon the remaining seventy-one counts as prayed for, save as to a small amount of interest. The several causes of action sued on are similar, and the first count is illustrative of all of them. It reads as follows (R. 12):

Second Amended Petition.

Now on this day comes the plaintiff and leave of the court having been obtained files this its second amended petition, and for cause of action against the defendant alleges and avers:

FIRST COUNT.

1. Plaintiff states that he is a citizen and resident of Jackson County, Missouri, and that the defendant is a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, as a life insurance company, and authorized by law and by its charter to make contracts of life insurance, re-insurance and the like under the supervision and authority of the State of Missouri.

2. Plaintiff further states that during the year 1907 and thereafter until about the month of November, 1912, the Great Western Life Insurance Company of Kansas City, Missouri, was a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, having its principal office and place of business at Kansas City, Jackson County, Missouri, and authorized to transact a life insurance business under and by virtue of the laws of the State of Missouri and its charter duly granted to it.

3. Plaintiff further alleges that on or about the 5th day of August, 1907, in consideration of the receipt by it of the sum of one hundred fifty ($150.00) dollars, the said Great Western Life Insurance Company issued to one John Kesl its annuity certificate number 391, a copy of which said annuity certificate is hereto attached marked "Exhibit A"

and the same is made a part of this petition and of this first count.

4. Plaintiff further alleges that under and by virtue of the provisions of said annuity certificate and in consideration of the receipt by it of the sum of one hundred fifty ($150.00) dollars, the said Great Western Life Insurance Company promised and agreed to pay to the said John Kesl annually during his life and thereafter to his heirs or personal representatives one share of the proceeds of twenty-five cents (25c) per one thousand ($1,000.00) dollars of all insurance, except re-insurance, written by the said Great Western Life Insurance Co. in the United States for fifty (50) years from the date of the incorporation of said company on which premiums computed on the annual basis had been received in cash, and also for so long thereafter as premiums were received on such insurance, such annuity to be determined by the aggregate of said twenty-five cents (25c) per one thousand (1,000) shares of insurance, ascertained at the end of each calendar year, and such sum divided by five hundred (500) and the quotient obtained should be the apportionment of each of said shares, and the total of one share thereof should be the annuity payable to the said John Kesl, payable within thirty days thereafter. And the said Great Western Life Insurance Company further guaranteed that the first annuity payable under such certificate should not be less than eight per cent (8%) upon the amount paid the company therefor.

5. Plaintiff further alleges that the first dividend of eight per cent due February 1st, 1908, was paid, but that after the year 1909 and each successive year thereafter, the said Great Western Life Insurance Company neglected and refused to carry out and perform the provisions and conditions of said certificate, and although the said John Kesl had done and performed all things required of him, the said Great Western Life Insurance Company failed, neglected and refused to pay to the said John Kesl any monies owing to him by reason of his purchase of such annuity certificate.

6. Plaintiff further alleges that on or about the ..... day of December, 1912, the said Great Western Life Insurance Company, by permission and with the approval of the Insurance Department of the State of Missouri, was absorbed by defendant herein; and the said defendant by such absorption became possessed of all the assets and property theretofore belonging to the Great Western Life Insurance Company, and obligated to pay the liabilities of said Great Western Life Insurance Company and to carry out and perform the contracts theretofore entered into by the said Great Western Life Insurance Company.

7. Plaintiff further alleges that after the absorption of said Great Western Life Insurance Company by defendant herein, the defendant failed, refused and neglected to carry out and perform any of the conditions and terms of said annuity certificate; and denied any liability under such annuity certificate; and denied any liability to the said John Kesl in any way whatever.

8. Plaintiff further alleges that for a good and valuable consideration the said John Kesl sold, transferred, assigned, and set over unto plaintiff the said annuity certificate and all of his several rights and claims growing out of the matters and things aforesaid.

Wherefore, by reason of the premises, plaintiff prays judgment against the said defendant in the sum of one hundred thirty-eight ($138.00) dollars, together with interest thereon at the rate of six per cent (6%) per annum, and for costs of this action.

Exhibit A, attached thereto, is the annuity certificate therein referred to, but we are setting forth as a sample of all, the annuity certificate issued to the defendant in error (referred to in his intervening bill, *infra*) as follows (R. 186):

All the certificates issued by the insurance company were alike except as to number, number of shares, amount, to whom issued and date (R. 111).

Annuity Certificate.

Whereas, The Great Western Life Insurance Company (hereinafter called the company), is desirous of qualifying for the writing of Life Insurance in a number of states, to the end that a large volume of business may be quickly and economically produced, and

Whereas, the company is authorized by its charter to carry on the business of insurance upon the lives of individuals, and every insurance pertaining thereto or connected therewith, and to grant, purchase and dispose of annuities and endowments of every kind and description, and is specifically authorized, by resolution of its Board of Directors, to dispose of annuities in the various states in which it desires to write life insurance, upon the basis, at par, of one hundred and fifty ($150.00) dollars per share, and

Whereas, A. F. Sherman has paid to the company for ten of said shares, the sum of fifteen hundred dollars.

Now therefore, in consideration of the premises, the company hereby agrees to apportion and pay to the owner

hereof, an annuity, during his life, and thereafter to his heirs or personal representatives, of ten shares of the proceeds of twenty-five cents per one thousand dollars of all insurance, except re-insurance, written by the company in the United States for fifty years from the date of its incorporation, on which premiums computed on the annual basis have been received in cash, and also for so long thereafter as premiums are received on said insurance; such annuity to be determined as follows, to-wit:

I. The aggregate of said twenty-five cents per one thousand dollars of insurance shall be ascertained at the end of each calendar year, and such sum divided by Five Hundred; the quotient obtained shall be the apportionment to each of said shares, and the total of ten shares thereof shall be the annuity payable hereunder, within thirty days thereafter.

II. The Company guarantees that the first annuity payable hereunder shall not be less than eight (8%) per cent upon the amount paid the company herefor, as stated above.

III. This certificate is assignable in writing and transferable only on the books of the company, in person or by attorney, upon presentation of this certificate at the home office of the company.

The answer interposes several defenses but the one which is relied upon here is the plea of *res judicata* based upon the proceedings in and the decree and judgment of the United States Circuit (now District) Court for the Western Division of the Western District of Missouri, in the suit of J. M. Wagstaff and others against the Great Western Life Insurance Company and others. This defense was interposed at every step up to and including the motion for a rehearing in the State Supreme Court. The applicable parts of the answer are as follows (R. 73):

(4) That heretofore (and prior to said merger) in cause number 3367, entitled J. M. Wagstaff and others vs. Great Western Life Insurance Company and others, the Circuit (now District) Court of the United States for the Western Division of the Western District of Missouri, a court having jurisdiction of the subject matter thereof and of the parties thereto and of many persons (including plaintiff herein and the holders and owners of said certificates) defending for themselves and for all others of the class constituting the holders of said certificates (the questions at issue being of common or general interest to the many persons, constituting such class, so numerous as to make it impracticable to bring them all personally before the court) made and entered on August 27, 1908, a final judgment and decree providing, among other things as follows:

(Here is set forth portions of the judgment and decree mentioned and which will be hereinafter set forth in full.)

Defendant further states that the question of any right or cause of action or demand growing out of or based on said annuity certificates or for any money paid therefor has been finally, fully and forever adjudicated and discharged, in said suit in the United States Circuit (now District) Court of the United States for the Western Division of the Western District of Missouri above mentioned.

Further answering, defendant states that said final judgment and decree above mentioned, canceled and held for naught the certificates mentioned in plaintiff's second amended petition herein and discharged the insurance company from any and all liability on account of or growing out of same or for any liability for any money paid therefor. A true copy of said judgment and decree is hereto attached and made a part hereof.

"(5) That an order was made by said court in said cause directing a sale by its receivers of the property and assets of the company, and thereupon and in pursuance of the decree aforesaid, certain of its stockholders and holders of annuity and investment certificates affected a reorganization of its business and affairs by paying into the treasury thereof, as capital and purchase price of said property and assets, sums of money aggregating more than its authorized capital stock and equal to or in excess of the actual and market value of all the property and assets of the company, free from any claim against it on account of said annuity certificates and investment certificates, if any such claims existed (which defendant denies), notwithstanding the corporate identity of the company was not changed.

The defenses interposed, as stated in the opinion of the State Supreme Court are (R. 364):

"The questions raised on this appeal were passed upon by trial court in refusing declarations of law asked by defendant—appellant here. Its principal contentions are: (1) that the assignments of the annuity certificates did not operate as assignments of causes of action for money had and received; (2) that such causes of action, if they ever existed, are barred by the five years' statute of limitations; (3) that plaintiff's claims are *res adjudicata* under the decree of the United States Circuit Court lifting the receivership; and (4) that having acquiesced in the decree during the time of the reorganization of the insurance company and for four years thereafter plaintiff's assignors and plaintiff through them are now estopped from asserting that its provisions are not binding upon them."

The reply of the defendant in error joins issue on the plea of *res judicata* (R. 85):

> Plaintiff, for reply to the 4th and 5th paragraphs of defendant's amended answer, alleges and avers that it denies each and every allegation therein contained.
>
> And plaintiff further alleges that, if any such decree was ever made, as alleged in said amended answer, the same was merely interlocutory and not a final decree, and, further was wholly void and of no effect so far as the certificates mentioned in the petition in this case and the holders thereof and the assignee, plaintiff herein, are concerned, for the reason that the parties to said Federal suit were not the same as the parties to this suit, and, further, the said Federal Court never acquired or had any jurisdiction over the subject matter in controversy herein, nor over such certificates or the holders thereof, and that the holders of said certificates at the time of the making of said decree, if any was made, were in no way parties to said suit and did not participate therein and were not bound thereby.
>
> And plaintiff specifically denies that he appeared in said suit for and on behalf of the certificate holders, mentioned in said petition, nor for and on behalf of himself as the assignee of such certificate holders; and plaintiff says that the certificates mentioned and described in said petition were assigned to him long after the making of said alleged decree in said court.

III.

The Great Western Agency Company (herein called the Agency Company) was organized in the year 1906 under the laws of Colorado, with an authorized capital stock of $2,000,000, the par value of the shares being $10.00 each. Stock in the corporation was sold to many (more than one thousand) persons, residing in several states (R. 182). These are called the Agency stockholders. The Agency Company accumulated $80,000 in cash, and its officers caused the Great Western Life Insurance Company to be organized, in the year 1907, under the insurance laws of the State of Missouri, with a capital stock of $100,000 fully paid, the shares being of the par value of $100 each. The Agency Company, through its officers, used the $80,000 on hand and borrowed sufficient additional money from a bank to pay up nine hundred and ninety-two of the one thousand shares of the capital stock of the Insurance Company. The remaining eight shares were

owned and held by the directors of the Insurance Company in their own right, but they likewise held, as trustees for the Agency Company, the nine hundred and ninety-two shares belonging to the Agency Company. The directors of the two companies were substantially identical.

IV.

The Insurance Company did a large insurance business from the start. The initial premiums, after deducting commissions and expenses, were insufficient to finance the operations of the company, and, in order to raise money for operating expenses, the so-called annuity certificates and annuity investment certificates were conceived and issued in two series of five hundred shares each. These certificates were sold to several hundred widely separated persons, and upwards of $300,000 was raised thereby and used by the Insurance Company. A list of holders of these certificates appears at page 289 of the Record and shows that approximately five hundred persons acquired them.

V.

The affairs of the Insurance Company went from bad to worse, and, in May, 1908, J. M. Wagstaff and others brought a suit in equity against the Agency Company and the Insurance Company (R. 170) as well as the officers and directors thereof, in the Federal Court at Kansas City. The complainants were Agency stockholders. The bill of complaint set up sundry well pleaded grounds for equitable relief and for the intervention of a court of equity, and prayed for the winding up of the affairs of the Agency Company, the distribution of its assets, etc. It was charged therein, *inter alia*, that the issuance of the annuity certificates was *ultra vires*, the allegations in that regard being as follows (R. 176):

> "17. Your orators further show that to further wrong and defraud themselves and others similarly situated, and divers and sundry other persons, and with a view of impairing and destroying what value there was or might be to said Great Western Life Insurance Company and the assets thereof, the said personal defendants, as the officers of said last named company, caused to be issued and sold certain so-called 'annuity certificates' or annuity contracts, which contracts were issued in excess of the powers of said Great Western

Life Insurance Company, and in violation of the laws of the State of Missouri, and rendered its charter liable to forfeiture, the issuance of which annuity contracts caused to be paid into the hands of said personal defendants as the officers of said Great Western Life Insurance Company, large sums of money, to-wit, the sum of three hundred and thirty thousand ($330,000) dollars.

"18. Your orators further show that when the matters and things set forth in the last paragraph of this bill relative to the issuance of said annuity certificates came to the knowledge of the superintendent of insurance of the State of Missouri, he took action to the end of declaring that such certificates were impossible to be issued lawfully by said Great Western Life Insurance Company and made further official investigation and found that the real title of the stock of said last named insurance company was in said agency company, and declared that the stock of said insurance company could not be so held lawfully, and required that as a condition of the said Great Western Life Insurance Company being permitted to do business in the State of Missouri, that such corporate ownership of stock should cease."

A receiver (C. S. Jobes) was forthwith appointed for the Agency Company. This receivership was soon thereafter extended to include and embrace the Insurance Company. The proceedings thenceforth are disclosed by sundry orders made by the Federal Court, and reports of the receiver and of the master.

A large number of certificate holders appeared and participated in the proceedings through their solicitors, B. P. Waggoner, James W. Orr, A. F. Sherman and E. A. Berry.

On August 15, 1908, the following order was made by the court (R. 159):

Order.

Now on this fifteenth day of August, 1908, being one of the regular days of the April, 1908, term of said court, the above cause came on to be heard upon the application of the receiver for the confirmation of the sale of the assets, properties and business of The Great Western Life Insurance Company, in accordance with the bid of The Kansas City Life Insurance Company, the receiver, C. S. Jobes, Esquire, appearing in person and by his solicitor, E. L. Scarritt, Esquire; the Kansas City Life Insurance Company, a bidder appearing by R. J. Ingraham, its solicitor; the Philadelphia Life Insurance Company, a bidder, appearing by W. F. Guth-

rie, its solicitor; the National Bank of Commerce, a creditor, appearing by H. C. Ward, its solicitor, and F. M. Pearl and other stockholders of the Great Western Agency Company and annuity certificate holders of The Great Western Life Insurance Company who are similarly situated, appearing by B. P. Waggoner and James W. Orr, said stockholders praying a postponement of said hearing, and representing to the court that the said stockholders and annuity holders were endeavoring to raise from the stockholders and annuity holders a sufficient fund to pay off all of the debts of the said The Great Western Life Insurance Company, and to meet all of its obligations and to rehabilitate and reorganize said company, and it appearing to the court that there are reasonable prospects of the accomplishment of the reorganization on such plan, and thereby secure to the creditors of said company the full payment of all of the debts or liabilities of said life insurance company.

It is therefore considered and ordered by the court that the further hearing of the application of said receiver to confirm the sale of said property and assets of The Great Western Life Insurance Company be and the same is hereby postponed and continued until Tuesday, August 25, 1908, at nine o'clock, a. m., and

It is further ordered that if by said last named date the stockholders of The Great Western Agency Company and the annuity certificate holders of the said The Great Western Life Insurance Company shall present to this court a feasible plan for the reorganization and rehabilitation of the said The Great Western Life Insurance Company, and shall be able to pay all of its debts and obligations in full then said stockholders and annuity certificate holders shall be permitted to proceed to said reorganization, and when accomplished to the satisfaction of this court, the properties and assets of said The Great Western Life Insurance Company shall be turned over and delivered to such stockholders and annuity certificate holders if they have acquired the capital stock of the said life insurance company, and in accordance with the further order of this court.

It is further ordered that as a condition of the granting of such postponement that the reorganization committee, so called of The Great Western Life Insurance Company, shall give to the receiver appointed in this cause an indemnifying bond in the penal sum of ten thousand dollars, conditioned for the payment of any and all damages which said receiver, as such, and the creditors of said life insurance company and the bidders at said sale, shall sustain if any and such bond having been presented to the court, it is hereby approved.

The Philadelphia Life Insurance Company, one of the bidders at said sale, having been required to furnish a bond in the penal sum of two hundred thousand dollars for the faithful carrying out of its bid and the performance of the conditions thereof, having presented its bond, said bond is likewise approved.

On August 27, 1908, the following order and decree was made by the court (R. 152). This decree is long, but because of its importance, we print it in full:

"Orders and Decree.

Now on this 27th day of August, 1908, being one of the regular days of the April, 1908, term of said court, came on further to be heard the objections and exceptions of F. M. Pearl and other stockholders of The Great Western Agency Company and annuity certificate holders of The Great Western Life Insurance Company to the confirmation of the sale of the assets, properties and business of said The Great Western Life Insurance Company heretofore made by the receiver hereof, complainants appearing by John H. Atwood, Esq., and H. C. Timmonds, Esq., said receiver appearing in person and by E. L. Scarritt, Esq., and Frank P. Sebree, Esq., his solicitors; The Kansas City Life Insurance Company, a bidder at said sale, appearing by R. J. Ingraham, Esq., its solicitor; The Philadelphia Life Insurance Company, a bidder at said sale, appearing by Charles M. Howell, Esq., and Frank Smith, Esq., its solicitors; Franklin Adams, J. Q. Cowee and other interveners appearing by A. L. Cooper, Esq., their solicitor; said objectors appearing by E. A. Berry, Esq., James W. Orr, Esq., their solicitors; ..... Hess, appearing by Hunt C. Moore, Esq., his solicitor, and A. F. Sherman, Esq., appearing for himself and certain other annuity certificate holders.

And said objections and exceptions being presented to the court, and said objectors praying leave to reorganize and rehabilitate the said The Great Western Life Insurance Company and to pay its debts, outstanding obligations and take over its properties, moneys, credits and effects and restore and make good any impairment of its capital stock and thereafter conduct the business of the said The Great Western Life Insurance Company; and all parties being before the court and being heard and the court being fully informed and advised, it is considered, ordered and decreed:

1. That the plan for the reorganization and rehabilitation of the said The Great Western Life Insurance Company presented to this court be, and the same is, hereby approved

by the court, upon the following terms and conditions, viz.:

(a) That the receiver of said company forthwith make a complete inventory of all the properties, moneys, credits, books and effects of every kind or nature now in his possession or under his control or in the possession or control of the present officers or directors of said company received from the said The Great Western Life Insurance Company, or later acquired in its behalf, and of any shares of the stock of The Great Western Life Insurance Company held by the directors and officers selected under the order of this court, and without delay turn over and deliver all of such property so inventoried to the officers and directors of the said The Great Western Life Insurance Company, to be hereafter named, and to take the receipt of the president and secretary of such company when so selected, therefor, whereupon all possession, control and dominion over the property, credits and effects of the said The Great Western Life Insurance Company and of said company by said receiver, including the directors heretofore selected under the order of this court, shall cease and terminate and said officers and directors shall promptly tender their respective resignations as such and their terms of office are at an end.

(b) That immediately upon receipt of said properties, moneys, credits and effects, as above set forth, W. T. Kemper, of the Commerce Trust Company, of Kansas City, Missouri, for and on behalf of The Great Western Life Insurance Company, who is hereby designated for such purpose, shall proceed at once to pay off and satisfy all the approved death claims now existing against the said The Great Western Life Insurance Company, as follows:

Death Claims Approved and Pending.

G. B. Van Laningham	$ 7,500.00
A. H. Brown	2,500.00
C. L. Kerr	10,000.00
Ida C. Crosse	1,000.00
Frank E. Diessroth	1,000.00
Herman Biddle	10,000.00
Leo T. Lynch	2,000.00
John W. Brown	5,000.00
Joseph E. Parker	1,000.00
David E. Dodds	2,500.00
Charles Raithal	1,000.00
Ben Levy	2,000.00
W. G. Hardeman	1,000.00
B. K. Bailey	5,000.00
Wayland R. Benedict	2,000.00

And said Kemper shall proceed without delay to the payment of the following claims against said Life Insurance Company, viz.:

Claims for premiums on declined applications, aggregating, approximately	$ 5,000.00
The claim of Hanna & Lupton (Kansas Loan Agreement)	7,500.00
And return to them their two notes aggregating	12,500.00
Subscriptions for proposed increase of capital stock, aggregating approximately	91,445.12
And current bills and claims approximately aggregating	21,900.32

And return to such like subscribers not included in the above amount all notes taken for such like subscriptions in lieu of cash, such payments to be made to them or their authorized attorneys.

To the Illinois Life Insurance Company, account of reinsurance	$ 654.91
or so much thereof as shall be owing.	
Accident claims	11.43
Medical Examiners' fees	1,500.00
or so much thereof as shall be owing.	
Balance due agents	2,332.25
or so much thereof as shall be owing.	

And the said Life Insurance Company shall within thirty days from this date file with the clerk of this court vouchers, showing the payment of the aforesaid matters.

(2) Within two days from the receipt of said moneys, properties and assets of the said Life Insurance Company, as above provided, said company shall make and file with the clerk of this court a bond properly conditioned, with surety to be approved by the clerk for the use and benefit of the receiver, in the penal sum of five thousand dollars, for the payment of such claims as against said company which may be presented and approved, but not to cover any death claims nor in any way connected with annuity certificates.

(3) Inasmuch as the plan or reorganization of the said Life Insurance Company has provided that any stockholder of The Great Western Agency Company may upon the payment of the sum equal to four dollars per share of the capital stock in said Agency Company, be entitled to so much of the capital stock of the said Life Insurance Company as will equal one-half of the amount so paid, and inasmuch as a large number of said stockholders have not yet availed themselves of this, it is by the court ordered that for a period of sixty days

from and after this date, any such stockholder desiring to avail himself of such privilege may do so and the Life Insurance Company shall receive such payment, and thereupon issue to such person the stock of the said Life Insurance Company in the proportion above specified.

Whereas it has further been the plan of the said reorganization of the said Life Insurance Company to permit holders of so-called annuity certificates heretofore issued by the said Life Insurance Company, upon the payment of the sum of $37.50 upon each share of such certificates and upon the surrender and cancellation of such certificates to receive of the capital stock of the said Life Insurance Company stock of the said company of the par value equal to one-half of the amount of such payment.

Certain certificate holders have already agreed to this, aggregating more than one-half thereof, and all such annuity certificate holders who have not so done are hereby given the privilege of so doing for twenty days from date hereof, to avail himself of such privilege, and any such annuity certificate holder failing to so avail himself within such period of time of twenty days from this date shall no longer have such privilege or right, and such annuity certificate holders shall thereafter be barred and estopped from making any claim of any kind whatsoever against said Life Insurance Company or officers or stockholder thereof, or against any assets of said company, and such annuity certificates will then and thereby be fully canceled in law and in equity, and such annuity certificate holders will have no further rights, claims or demands against said company, its officers, stockholders, assets or property on account thereof.

(4) It has been made to appear to this court that since the appointment of a receiver, May 18, 1908, and under his direction and promises, express and implied, second year premiums aggregating approximately thirty thousand dollars ($30,000.00) have been paid to him, the said receiver, by policy holders of The Great Western Life Insurance Company, which sum of money is now in the hands of Herman F. Lang, the present treasurer of said company. Said sum of $30,000.00 belongs to said Life Insurance Company, as reorganized, and it will at once be paid over to said company as reorganized, by him, the said Lang, as treasurer, without delay. It is claimed that said fund of thirty thousand dollars in part is a trust fund, giving the right to such policy holders who have thus paid their premiums to the receiver to withdraw such premiums thus paid. Said trust is hereby recognized to all such policy holders whose policies aggregate approximately $710,000.00 who may make the showing to the

satisfaction and approval of this court that they have thus paid said premiums in whole or in part under the promise of any judge of this court or of the receiver, such promise being either express or implied, that such premiums should be returned to those making such payments under such promises. But to avail themselves of such trust an application therefor, accompanied by the policy and policies shall be filed with the clerk of this court within ten days from the notice thereof. And such notice shall be regarded and held to be complete when this part of the decree in substance and effect is deposited in the post office or any branch or box thereof of Kansas City, Missouri, in an envelope properly addressed and stamped, said address being as shown by the books of said company. And any policy holder forming a part of said $710,000.00 approximately failing to file such application and policy within said time shall have no further claim as a beneficiary under said trust, and his rights thereto as such beneficiary of such trust shall be and is hereby decreed to be at an end and fully barred. And in the event of any of such applications to participate in such trust being affirmatively decreed by this court, such policy and policies thus filed shall be and it is hereby decreed that they are fully canceled and held for naught. And if any of such trusts are affirmatively decreed then and in that event there shall be refunded and paid to such party or parties such an amount of such premiums thus paid to the receiver as shall be unearned for the balance of the year for which such premiums were paid. And within five days from this date the said The Great Western Life Insurance Company shall file with the clerk of this court a bond properly conditioned, with ample surety to be approved by the clerk of this court, in the penal sum of thirty thousand dollars for the immediate payment upon demand of such unearned premiums as shall be covered by decrees of this court to be entitled thereto.

The court finds that of the capital stock of said Life Insurance Company eight shares are held by individuals. The remaining 992 shares are held by C. S. Jobes, the receiver herein. But of said 992 shares of stock thus held by the receiver herein 445 shares thereof are deposited as collateral security with the National Bank of Commerce of Kansas City, Missouri, for the payment of $21,000.00 justly owing the said National Bank of Commerce of Kansas City, Missouri.

The receiver herein, C. S. Jobes, will sell at once, at private sale, to James Chappelle, trustee in trust for the purchasers of the stock of The Great Western Life Insurance Company at the upset price of eleven thousand dollars, and as the property and assets of the Great Western Agency Com-

pany the said 992 shares of the capital stock of the said The Great Western Life Insurance Company, subject, however, to the lien and equities in favor of the said National Bank of Commerce of Kansas City, Missouri, for the payment of the said $21,000.00; and both said receiver and said National Bank of Commerce, upon payment to them respectively of said sum shall promptly surrender and deliver to him, the said James Chappelle, trustee, all of the said capital stock held by them or either of them, and shall duly assign the same to the said James Chappelle, trustee, and the said stock shall be by said Life Insurance Company at once properly transferred on the books of said company to him the said James Chappelle, trustee.

The receiver herein for his services is hereby allowed the sum of twenty-five hundred dollars ($2,500.00).

And he is hereby allowed, in full for his solicitors' fees, the sum of three thousand dollars ($3,000.00).

And ..... Case, the present president of said company, is hereby allowed the sum of twelve hundred dollars ($1,200.00).

And said Herman F. Lang, as treasurer, is hereby allowed the sum of three hundred and fifty dollars ($350.00).

After the appointment of a receiver herein the former directors all resigned, and with the approval of this court nine other directors were elected in lieu of the former directors. Each of said new directors is allowed one hundred dollars, or nine hundred dollars in the aggregate.

For the month of August, 1908, there will be a rent account due of eight hundred dollars; there will be office expenses estimated for the month of August, 1908, of one thousand dollars.

Taxable court costs due the Circuit Court of Jackson County, Missouri, estimated at ($125.00) one hundred and twenty-five dollars. Said allowances for said services, fees, compensation and salaries to officers and solicitors are hereby established in said sums, which shall be paid, and when so paid shall be in full for such claims. And the aforesaid items and one now to be mentioned, aggregate ten thousand seven hundred and seventy-nine and 17-100 ($10,779.17), for which reason the upset price of eleven thousand dollars for the sale of said stock is hereby fixed. The other items of office expenses and taxable costs are subject to revision hereafter by orders of this court and said sums thus fixed shall be at once paid. Also there is allowed $904.17 for examination of the agency and life affairs which is to be paid.

That said, The Great Western Life Insurance Company, reorganized, has deposited as an additional sum for carrying

out these orders and decree with the Commerce Trust Company, of Kansas City, Mo., one hundred and thirty thousand dollars ($130,000.00). And W. T. Kemper, an officer of that trust company, shall take credit on the books of said company for said moneys, and at once pay out the same in accordance with this decree, and file herein receipts therefor, which said words, "at once" is hereby understood to mean within five days from the date hereof.

Thomson, Stanley & Price, for legal services, make claim for the months of June, July and August, under attorneys' contract with said Life Insurance Company, amounting to $501.00, which shall at once be paid, provided said firm shall turn over all papers.

A. F. Sherman holds annuity certificates, face value fifteen hundred dollars. On account thereof he gave his note for $1,250.00, which he has not paid. The said Sherman is hereby given the privilege of surrendering said annuity certificates as fully canceled upon the receipt by him of said note, in which event he, the said Sherman, will retain any dividend heretofore paid him on account of said certificates, and he will have no claim against said company for any money he paid for said certificates. And the same right and privilege and burden is hereby given to and cast upon any other annuity certificate holder who has given a note or notes on account of annuities.

Other claims now or that may hereafter be asserted, not hereinbefore covered, are passed for the future consideration of the court.

It is further ordered by the court that the respective bids of the Kansas City Life Insurance Company and the Philadelphia Life Insurance Company for the property, assets, business and effects of the said The Great Western Life Insurance Company, are each declined, and the court declines to approve of either of said bids; and the receiver will at once return to them their respective deposits and the bonds that they or either of them have filed herein, are hereby declared to be at an end and the liability thereon both as to principal and sureties is at an end.

It is further ordered and decreed that the jurisdiction of this court is fully retained, extended and continued from time to time until this cause is finally concluded, over all subjects-matter covered by any pleading now on file or that later on may be filed; and over all parties whose names are now on the record and such other party or parties as may later on be brought into court, or who may come into court by any pleading. And all such parties now to the record, including the said, The Great Western Life Insurance Company, and all parties who may later on be made parties herein, shall be

bound by such further orders and decrees as to the court may seem necessary and proper. All of which are ordered of record this August 27th, 1908.

No objections or exceptions were interposed or filed to this decree and no appeal was taken therefrom.

VI.

The financial condition of the Insurance Company is stated by the receiver, as follows (R. 201):

> "A summary of said report and of the financial condition of said Insurance Company shows liabilities of about $420,000.00, which does not include the cost and expenses of the management under the receivership, while the assets of the company, consisting of mortgage loans, investment bonds, cash on hand, furniture, fixtures, stationery, supplies and all other property and assets, amount to $278,700.00, making an excess of liabilities over assets of $141,300.00."

The Supreme Court of the state, in its opinion, said with reference to the financial condition of the Insurance Company (R. 358):

> "On July 6, 1908, the court made an order directing its receiver to advertise and sell the property and assets of the Great Western Life Insurance Company. In response to the published notice calling therefor, three bids were filed with the receiver. That of the Kansas City Life Insurance Company was deemed the best by him and on July 28, 1908, he reported a sale to that company and asked its confirmation by the court. Under the terms of the proposed sale the Kansas City Life Insurance Company would have assumed the obligations of the Great Western Life Insurance Company under the latter's contracts of insurance but not its undertakings under the annuity certificates; and from the cash that was to be paid, the receiver would have realized only about $125,000 for the payment of debts and distribution among the stockholders of the Great Western Agency Company (hereinafter called the stockholders). As the indebtedness alone, excluding the annuity certificates entirely from consideration, exceeded that amount, it was quite apparent that if the sale were confirmed, the stockholders would certainly get nothing and the certificate holders would probably be in like predicament. While the report of sale was pending some of the stockholders and certificate holders held a meeting at Topeka, Kansas, for the purpose of devising means to protect

their interests. The meeting was largely attended as were subsequent ones held in Kansas City. At one of these meetings Mr. James Chappelle was 'informally designated by certain stockholders and annuity certificate holders as a sort of trustee to collect money and take such steps as might be necessary to pay the debts of the Insurance Company and to generally handle the situation.' "

His Honor, Judge Smith McPherson, of the Federal Court, made the following statement relating to the same subject (R. 164):

"And so it has been the view of the court during all those several days of argument, to see to it that the policy holders are protected; and, by the decree herein they are protected, and their policies preserved in all integrity. The rights of other creditors sink into comparative insignificance, as compared with the rights of policy holders. Of course, the other creditors ought to be and should be paid, if it is possible to do so; and, in protecting these creditors a great difficulty in the mind of the court has arisen—and, particularly with reference to the rights of these annuity certificate holders. It has been suggested, that in transacting that phase of the business that such acts were *ultra vires*. The Superintendent of Insurance for Missouri, seemed to be in doubt about it, and wavered to and fro with reference thereto. From a letter from him presented to the court, written in August, 1907, in discussing the matter, he expressed a doubt as to the propriety of that class of business; but, then said that it might be continued until the first of September following, after which that line of business was to cease. He now insists, as I understand him, that money shall be deposited with him to cover these annuity certificates; but, this is utterly impossible. The bids of the Kansas City Life Insurance Company and The Philadelphia Life Insurance Company—neither of them would furnish a dollar for the stockholders or the annuity certificate holders; and the reorganization committee, which makes an offer better than either of those bids, will not agree to carry the annuity certificate holders. And, if that phase of the business was *ultra vires*, then it is beyond the scope of the powers of the Superintendent of Insurance of Missouri; and, he has no more right to insist upon the deposit of money for that purpose, than he would for the deposit of cash for the mortgage or other indebtedness of any other corporation. And, if the business were not *ultra vires*, then he had no right to insist that the business should terminate on September 1st, 1907. Whether this phase of the

business was *ultra vires* or not, this court at this time does not determine. If it were *ultra vires*, possibly an estoppel would arise—from the fact of a payment of a dividend of 8 per cent, received by the holders of such certificates. These questions are passed to one side, and, are mentioned to show the difficulties with which the court has had to contend. An 8 per cent dividend was paid for the first year—not only because a promise was made in the certificates of a dividend of at least 8 per cent, but, because the sale of twenty-four millions of insurance called for the payment of an 8 per cent dividend. But, that 8 per cent dividend, was paid from moneys, not a farthing of which was earned; and, without the slightest doubt in my mind could be recovered back, because paid out of the principal and not out of earnings. So that, the annuity certificate holders while being creditors to a certain extent, are likewise debtors; and, the equities of such holders dwarf into insignificance. At least, dwarf so that they are without substantial merit, as compared with the rights of other creditors. And I am not much persuaded with the arguments—consuming much of the time for two days—as made in behalf of these certificate holders. The suggestion of the Superintendent of Insurance for the State of Missouri, is that four hundred and fifty thousand dollars of money must be deposited—intending thereby to protect the three hundred thousand dollars of certificate holders. This cannot be considered for a moment. The suggestion is made here in argument, that these certificate holders should be allowed to cash their certificates in. And, this cannot be considered for a moment, for two reasons. One is, that they hold no such obligations—the other reason is, that neither of the bidders proposed to pay such an amount as would care for them; and, the reorganization committee of the stockholders have not offered to do so, and could not afford to do so. So that, if such a notion should be entertained there would be a collapse of the whole situation, and neither they nor the stockholders would receive a farthing. It was not suggested in argument—but, I have entertained the notion for a time that perhaps a present money worth of these certificates could be ascertained. But that is impossible, because no man could tell the number of lapses and no man can tell the amount of insurance that will be sold from time to time. So that, giving the certificate holders the benefit of all alleged merits—resolving all doubts in their favor—they are treated with great consideration when given the option for a fixed period of time to accept the proposition of the stockholders—who, along with them, are creditors until the debts have been paid. And such will be the decree. If they want to retain the dividends thus paid them without warrant or right, and

allow their certificates to be cancelled by expiration of time, very well; and if they want to exercise the right of stockholders by the payment of other moneys to help make this impaired condition good, they may have the right to do so."

The bid of the Kansas City Life Insurance Company was approved by the receiver, and reported to the court as the highest and best bid. The superintendent of insurance of Missouri concurred in this report by an endorsement in writing thereon signed by him (R. 199). This bid did not make available any money for the annuity certificate holders. An analysis of said bid shows a gross offer of $300,000, in cash and a further sum annually during a period of five years equal to $1.00 per $1,000 of insurance continued in force for said term, which was estimated to produce in five years, an additional $100,000, or a total of $400,000, less about $150,000 to be deducted on account of the legal reserve on business in force and also less an additional amount of about $25,000, leaving immediately available for creditors only $125,000, and ultimately about $225,000. The indebtedness amounted to $420,000, exclusive of all claims of certificate holders and stockholders The entire capital stock was dissipated. One hundred cents on the dollar of the par value of the stock would not have made good its impairment. The plan of reorganization required the participants to pay in a sum equal to $200 for each share of $100, or 200%, in order to supply the funds necessary. J. H. Upton, actuary, made an affidavit analyzing the bids and stated that the bid of the Kansas City Life Insurance Company made available only $124,447.60 for creditors (R. 335).

VII.

As stated, a master was appointed, the order of appointment reading (R. 75):

"Ordered that all intervening petitions heretofore filed herein be and the same are hereby referred to the Honorable Willard P. Hall, master in chancery, before whom the issues therein shall be made up, and it is further ordered that all persons having claims of any character against the Great Western Agency Company and The Great Western Life Insurance Company shall present the same in due form of intervention before said master and upon the issues therein being completed before the master, he shall proceed in due form and time to hear and determine the same and to render to

this court his findings together with the evidence therein and his conclusions of the law of the case. It is further ordered that upon receipt of this order the master give notice by two insertions, with an interval of one week between them, in two of the daily newspapers of Kansas City, Missouri, that all claims and demands of whatsoever character held by any person, company or corporation against the said defendant companies shall be duly presented to the master for hearing on or before the 1st day of October, 1908, or the same will be forever barred."

Due notice was given by the Master, as ordered, the published notice reading (R. 185):

"In pursuance of an order of the above named court in the above entitled cause, notice is hereby given that all claims and demands of whatsoever character held by any person, company or corporation, vs. The Great Western Agency Company or The Great Western Life Insurance Company, must be duly presented to me as Master in Chancery at my office 809-811 New York Life Building, Kansas City, Missouri, for hearing on or before October 1, 1908, or the same will be forever barred.

Willard P. Hall,
Master in Chancery.

(Published, Kansas City Star, July 27, 1908; Kansas City Times, July 28, 1908; Kansas City Star, August 3, 1908; Kansas City Times, August 4, 1908; Kansas City Post, July 27, 1908; Kansas City Post, August 3, 1908.)"

The State Supreme Court said (R. 357):

"The court also appointed a master in chancery, who in pursuance of the order appointing him, gave notice that all claims and demands held by any person, company or corporation against either of the companies in the hands of the receiver should be presented to him as such master for a hearing on or before October 1, 1908, or the same would be forever barred."

No further mention was made or consideration given by the state court to the proceedings before the master.

Defendant in error filed a bill of intervention, which was referred to the master, as follows (R. 186):

Bill of Intervention.

To the Judges of the Circuit Court of the United States for the Western Division of the Western District of Missouri, Sitting in Equity:

The Bill of Intervention of A. F. Sherman, exhibited against The Great Western Life Insurance Company, a corporation, C. S. Jobes, receiver of The Great Western Agency Company, C. S. Jobes receiver of The Great Western Life Insurance Company, and all of the complainants and defendants in the above entitled cause and said above named intervener brings this his Bill of Intervention under the general permission of this court as to do and thereupon shows.

1. That upon the bill of complaint of J. M. Wagstaff, and others, Complainants vs. The Great Western Agency Company, and others, defendants, in the above entitled cause in equity, this Honorable Court, by its order duly made and entered of record on or about May 16, 1908, appointed the defendant, C. S. Jobes, receiver of The Great Western Agency Company, and of all of its property and assets of every kind and character, including whatever capital stock or other interest or interests said Agency Company had, or may have, in the defendant, The Great Western Life Insurance Company, and did order that the said receiver should order an election to be made of directors and officers of said The Great Western Life Insurance Company, and did make other proper and appropriate orders in and concerning the premises, to which orders and the records thereof reference is hereby particularly made for the contents thereof, and all of said orders are made a part of this bill of intervention as fully and effectually as though copied herein verbatim; that the said receiver did thereupon qualify as such receiver and entered actively upon the performance of his duties as such, and from that time forward until the present, has continued to act as such receiver and took possession of substantially all of the property and assets of the defendant, The Great Western Agency Company, and elected a board of directors of said company, and did thereupon assume charge and control of the said The Great Western Life Insurance Company and the administration of its affairs and assets, all in pursuance of and in conformity with the terms of said order or orders of this court.

2. That the defendant, The Great Western Life Insurance Company is a corporation created and existing under and by virtue of the laws of the State of Missouri, having been organized in the month of April, 1907, with an authorized and paid up capital stock of $100,000.00, and that said de-

fendant corporation was authorized by its charter and the laws of the State of Missouri to engage in the business of writing and issuing policies of insurance upon the lives of individuals and of purchasing and disposing of annuities and endowments of every kind and description whatsoever; that on July 6th, 1908, this Honorable Court by its order duly made and entered of record appointed the defendant, C. S. Jobes, receiver of the said The Great Western Life Insurance Company and of all of its property and assets of every kind and character and on or about the same date directed the said C. S. Jobes as receiver to sell and dispose of all the property and assets of every kind and character belonging to the said The Great Western Life Insurance Company.

3. That on or about June 15th, 1907, The Great Western Life Insurance Company upon representations that it was authorized so to do, issued to this intervener a so-called 'Annuity Certificate,' bearing the number 96, and of the purported value of $1,500.00 in words and figures as follows, to-wit:

(Here follows the annuity certificate issued to defendant in error hereinbefore set forth.)

4. That in consideration of the issuance of said so-called annuity certificate, this intervener executed and delivered to the said The Great Western Life Insurance Company his promissory note bearing date of June 15th, 1907, whereby he promised and agreed to pay said The Great Western Life Insurance Company $1,500.00, with interest from maturity thereof at the rate of eight per cent (8%) per annum.

This intervener further says that on September 13th, 1907, he paid to the Commerce Trust Company, the then holder of said note, the sum of $258.35, and issued another promissory note of the same date whereby he promised and agreed to pay the sum of $1,250.00 thirty days after date, at the rate of eight per cent (8%) per annum from maturity.

This intervener further says that on October 14th, 1907, he took up the said last described note and paid to the said Commerce Trust Company the sum of about $16.00, and executed another certain promissory note reading as follows:

"1,250.00 Kansas City, Mo., Oct. 14, 1907.

Sixty days after date .... promise to pay to Great Western Life Insurance Company or order twelve hundred and fifty dollars at the Commerce Trust Company, Kansas City, Mo., with interest from .... due payable annually, at the rate of eight per cent per annum. If not so paid, compounded.

Value Received

No. 541 Due Dec. 13th A. F. Sherman.

5. That in order to induce this intervener to purchase the said socalled annuity certificate Mr. J. E. Smith, treasurer of the said The Great Western Life Insurance Company, represented to this intervener that the said The Great Western Life Insurance Company had full and complete authority to issue the said so-called annuity certificates and that there was being issued 500 shares of said certificates, amounting to $75,000.00, which said sum of money was to be used in promoting and benefiting the business of the said The Great Western Life Insurance Company, and that no further issue of annuity certificates would be made other than the one issue of $75,000.00. Contrary to the representative as aforesaid, by the said J. E. Smith, the said The Great Western Life Insurance Company issued so-called annuity certificates to the amount of about $330,000.00, which said fact was ascertained by this intervener some time in the early part of December, 1907. Upon ascertaining said facts, this intervener refused to pay the said last mentioned note, when due, and the same is now as the said intervener is informed, believes and therefore charges the fact to be among the property and assets of The Great Western Life Insurance Company, which is now in the hands of Mr. C. S. Jobes, receiver.

6. This intervener further shows that the said The Great Western Life Insurance Company was not authorized by its charter to issue the said so-called annuity certificates and had no power or authority whatsoever for so doing.

7. This intervener furfther shows that he is informed and believes and therefore charges the fact to be that the said note is listed among the assets of the said The Great Western Life Insurance Company and is about to be sold and transferred by Mr. C. S. Jobes, receiver herein, which if permitted to be done, would work a hardship and irreparable injury upon this intervener.

Wherefore, this intervener being remediless at and by the rules of the common law, and being without remedy except in a court of equity where matters of this kind are properly cognizable and reviewable, prays that the said defendant the said C. S. Jobes as receiver of the said The Great Western Life Insurance Company, may answer the premises, but not under oath or affirmation, the benefit whereof is expressly waived by this intervener and intervener further prays that the said C. S. Jobes as receiver herein be instructed to cancel the said note and to refrain from selling or transferring the same to any one whatsoever, that the said note be declared null and void and that this intervener may be granted such other and further relief and remedies in the premises as shall seem meet and agreeable to equity and your intervener as in duty bound will ever pray."

In the judgment and decree of August 27, 1908, *supra*, the issues raised by said bill of intervention were determined and defendant in error was accorded relief as prayed.

VIII.

Finally in 1912, the cause was disposed of by an order, wherein the court found and recited (R. 250):

> "Now on this 14th day of October, 1912, the defendant, The Great Western Life Insurance Company, appearing by James W. Orr, its attorney, represented to the court that heretofore and on the 27th day of August, 1908, before the Honorable Smith McPherson, Judge, decree and orders were entered in the above entitled cause finally disposing of all matters and things involved and then before the court, and in said decree it was provided, viz:
>
> 'It is further ordered and decreed that the jurisdiction of this court is fully retained, extended and continued from time to time until this cause is finally concluded over all subjects-matter covered by any pleading now on file or that later on may be filed, and over all parties whose names are now on the record and such other party or parties as may later on be brought into court or who may come into court by any pleading. And all such parties now to the record and including the Great Western Life Insurance Company, and all parties who may later on be made parties herein, shall be bound by such further orders and decrees as to the court may seem necessary or proper. All of which are ordered of record this August 27th, 1908.
>
> And it being made to appear to the satisfaction of the court that this cause is finally concluded over all subjects-matter covered by any pleading then or since filed in said cause and that all parties then or thereafter being brought to said court in said cause have been heard, and the matters disposed of and that it is no longer necessary or important to continue or retain jurisdiction of said cause.
>
> It is by the court Ordered and Decreed that further jurisdiction of this court over said cause or any of the matters relating thereto or involved therein be and the same is hereby withdrawn and discontinued, and this court hereby relinquishes further jurisdiction of this cause or of the subject matter thereof."

IX.

In the course of the proceedings in the Federal Court, His Honor, Judge McPherson, handed down an opinion or memoran-

dum giving a history of the case and of the proceedings and the views and the considerations which controlled the court (R. 161). It will be noted therefrom and from the decree of August 27, 1908, *supra*, that it was contemplated to sell the assets and business of the Insurance Company to the reorganization committee and in legal effect they were so sold; and further that the capital stock of the Insurance Company owned by the Agency Company was sold to Mr. C. C. Chappelle of the reorganization committee and acting in its behalf. The court said (R. 167):

> "Out of 1,000 shares of stock of the Great Western Life Insurance Company, 992 shares are held by the Agency Company, leaving but 8 shares to be held by individuals. Of these 992 shares held by the Agency Company, approximately one-half of them were pledged as collateral security for a loan of $21,000.00 made by The National Bank of Commerce of Kansas City, Missouri, which bank has not as yet been paid, and which stock it holds as such collateral. That debt must be paid and that stock lifted. The remaining one-half, approximately, of the capital stock is now held by Mr. Jobes, as receiver. The decree will be, that the National Bank of Commerce be paid $21,000.00, and the stock thus held as collateral be assigned to the Chairman of the reorganization committee, to be held by him in trust for those who come in, proportionately to their holdings. The stock now held by the receiver must likewise be transferred to the Chairman of the Reorganization Committee, to be held in like trust. But, to accomplish it, in addition to paying the National Bank of Commerce $21,000.00, all such stock, being the entire capital stock of the company less the 8 shares held by individuals, will be sold by the receiver, at private sale, to the Chairman of the Reorganization Committee, at an upset price aggregating the expenses of the receivership. This is the only feasible way of bringing this about, unless, I deduct from the amounts due the creditors such a sum as will cover the expenses of the receivership. I have thought out many plans, and can arrive at no other conclusion that will bring this about, except by driving the re-organization from the court and accepting one of the bids, and then scaling down the credits justly due other people and other concerns."

Also the decree of August 27, 1908 (R. 153):

> "And said objections and exceptions being presented to the court, and said objectors praying leave to reorganize and rehabilitate the said The Great Western Life Insurance Company and to pay its debts, outstanding obligations and take

over its properties, moneys, credits and effects and restore and make good any impairment of its capital stock and thereafter conduct the business of the said The Great Western Life Insurance Company; and all parties being before the court and being heard and the court being fully informed and advised, it is considered, ordered and decreed:

1. That the plan for the reorganization and rehabilitation of the said The Great Western Life Insurance Company presented to this court be, and the same is hereby approved by the court, upon the following terms and conditions, viz."

X.

The reorganized company continued in business until 1912, when it was acquired by or merged with the plaintiff in error, the merger agreement rendering plaintiff in error liable for the debts of the Insurance Company, subject to all defenses. Hence the suit against plaintiff in error. In the interim, no claim was made or asserted by any of the holders of the Annuity Certificates not participating in the reorganization. Defendant in error, as attorney for the holders of said non-participating certificate holders wrote a letter to plaintiff in error, bearing date of February 23, 1913, reading as follows (R. 118):

"As attorney for those persons, a list of whose names are hereto attached and made a part hereof, each and every of whom are the owners and holders of certain so-called annuity or investment certificates issued by The Great Western Life Insurance Company of Kansas City, Missouri, I hereby demand the performance of said contracts by said International Life Insurance Company, and the payment of each annuity due under such certificates.

"As attorney for each and every of such persons, I hereby advise you that unless the terms of said so-called annuity or investment certificates are full and completely complied with, according to the terms thereof, by said International Life Insurance Company, or on before the seventh day of March, 1913, you are to consider this as a notice that each and every of such owners and holders of said so-called annuity or investment certificates, rescind and cancel each and every of said certificates, and demand the return of all moneys paid by each and every of them to The Great Western Life Insurance Company, thereon, less whatever sum or sums may have been paid to them or any of them, upon said certificates.

"As attorney for each and every of said persons, I also hereby advise you that unless the demand for the return of

said money is complied with on or before the eleventh day of March, 1913, that suit will be instituted to enforce the rights of my clients."

Thereafter, and prior to the institution of the action, which was on April 1, 1913, the defendant in error acquired the certificates, described in the petition, by assignments reading as follows (R. 113):

> "For value received, I hereby sell, assign and transfer unto.....the within certificate and the shares represented thereby, and hereby constitute the present Secretary of The Great Western Life Insurance Company as my agent and attorney in fact to transfer the same on the books of the Company."

It may well be noted that twenty-seven counts of the petition were dismissed at the trial because the holders thereof had participated in the reorganization and their certificates had been surrendered and cancelled; and that fourteen counts were similarly dismissed because defendant in error had no assignment of the certificates therein involved.

XI.

The trial court and the Supreme Court of the State held that the Federal Court did not have jurisdiction of the seventy-one assignors of defendant in error, and that the decree of the Federal Court was, therefore, a nullity as to them (R. 368).

QUESTIONS FOR DETERMINATION.

The questions for determination are:

1. Is the judgment and decree of the Federal Court in the equitable suit of *Wagstaff, et al* v. *Great Western Life Insurance Co., et al res judicata* of the claims and causes of action sued upon by defendant in error, and is such judgment a bar to this action.

2. Did such Federal Court have jurisdiction of the subject-matter of said suit in equity and of the person of the holders of the so-called annuity certificates, including the assignors of defendant in error.

SPECIFICATION OF ERRORS.

I.

The decision and judgment of the Supreme Court of Missouri violates Section 1 of Article IV of the Constitution of the United States in that the said Supreme Court failed to give full faith and credit to the record and judicial proceedings of the Circuit (now District) Court of the United States for the Western Division of the Western District of Missouri, in cause No. 3367 entitled J. M. Wagstaff, *et al* vs. Great Western Life Insurance Company, *et al.*

II.

The decision and judgment of the Supreme Court of Missouri violates Section 2 of Article III of the Constitution of the United States in that it ignores and, in effect, denies the jurisdiction of the said United States Circuit Court to render the final decree and judgment which was rendered by it in said cause of Wagstaff vs. Great Western Life Insurance Company, adjudicating and determining all the issues of fact and law there pending.

III.

The decision and judgment of the Supreme Court of Missouri fails to observe and violates and, in effect, holds invalid the laws of the United States conferring upon said United States Circuit Court the jurisdiction to entertain, hear and determine suits in equity involving controversies between citizens of different states.

IV.

The Supreme Court of Missouri erred in deciding that said United States Circuit Court did not have jurisdiction, in the said suit of Wagstaff vs. Great Western Life Insurance Company, of the subject-matter and parties involved therein and herein, and that said decree and judgment so rendered was not valid, binding and conclusive in accordance with its terms.

V.

The Supreme Court of Missouri erred in deciding that the said decree and judgment rendered by said United States Circuit Court was not *res judicata* of the claims and causes of action sued on herein, and a bar thereto, and a former adjudication thereof.

VI.

The Supreme Court of Missouri erred in not deciding that the failure of the defendant in error or his assignors to file or present their claims, here involved, to the special master or to the said United States Circuit Court as required by the orders of said court, barred, foreclosed and estopped defendant in error from maintaining this action.

VII.

The Supreme Court of Missouri erred in affirming the action of the trial court in refusing to give declaration of law No. 2, requested by plaintiff in error, reading as follows:

(2) "The court declares the law to be that the decree and judgment of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company and others, is binding and conclusive upon the plaintiff, and plaintiff is thereby barred from maintaining this action and the judgment herein must be for and in favor of the defendant."

VIII.

The Supreme Court of Missouri erred in affirming the action of the trial court in refusing to give declaration of law No. 3, requested by plaintiff in error, reading as follows:

(3) "The court declares the law to be that if the plaintiff acquired the certificates described in the petition subsequent to the decree rendered by the United States Circuit Court for the Western Division of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company *et al.*, and with knowledge of such decree, then he cannot recover in this case, and the finding and judgment must be for and in favor of the defendant."

IX.

The Supreme Court of Missouri erred in affirming the action of the trial court in refusing to give declaration of law No. 5, requested by plaintiff in error, reading as follows:

(5) "The court declares the law to be that if the holders of certificates other than those mentioned and described in the petition, contributed money as provided for in the decree of the United States Circuit Court for the Western Division of the Western District of Missouri in the case of Wagstaff against the Great Western Life Insurance Company *et al.*, for the purposes mentioned in said decree and in reliance upon the force, effect and validity thereof and that the plaintiff and the then holders of the certificates mentioned in the petition, knew of such payments of money and failed and neglected to protest or object thereto, but said or did nothing, then they are estopped from questioning the force, effect and validity of said decree, and plaintiff cannot recover and the judgment herein must be for and in favor of the defendant."

X.

The Supreme Court of Missouri erred in not holding that the plaintiff was estopped from denying that he as such assignee was bound by the decree in the case of Wagstaff against the Great Western Life Insurance Company.

XI.

The Supreme Court of Missouri erred in not holding that the assignors of plaintiff were bound by the decree in the case of Wagstaff against the Great Western Life Insurance Company, and that said assignors had no right or cause of action to transfer by assignment.

POINTS OF LAW AND AUTHORITIES.

I.

The defense of *former adjudication, i. e.*, that the judgment and decree of the United States Circuit Court in the equitable proceedings, of *"J. M. Wagstaff et al. v. Great Western Agency Company, Great Western Life Insurance Company et al.,"* in Equity No. 3367, was a bar to this action, was raised and urged at every stage of the proceedings in both the trial court and the Missouri Supreme Court, and became the determinative question of the decision. This presents a Federal question because the plea of former judgment in a Federal Court adjudicating a right of Federal origin asserts a right which, if denied, makes the case reviewable here.

Cumberland Glass Mfg. Co. v. DeWitt, 237 U. S. 447.
Tullock v. Mulvane, 184 U. S. 497.
Live Stock Co. v. Slaughter House, 120 U. S. 141.
Phoenix Fire & Marine Ins. Co. v. Tenn., 161 U. S. 174.
Julian v. Central Trust Co., 193 U. S. 93.

II.

(a) The attack made by defendant in error upon the judgment is collateral, and in such proceedings it is elementary that, where a court of general jurisdiction has exercised its powers, it will be presumed, unless the contrary affirmatively appears, that it had jurisdiction of both the subject-matter and the parties.

Ex parte Cuddy, 131 U. S. 280, 285.
Manson v. Duncanson, 166 U. S. 533.
Applegate v. Mining Co., 117 U. S. 255.

(b) Unless the lack of jurisdiction affirmatively appears from the record, such presumption is conclusive, particularly where the jurisdiction depends upon facts which must be ascertained and determined.

Toy v. Hopkins, 212 U. S. 542.
Flannigan v. Land Co., 144 Fed. 371.
Manson v. Duncanson, 166 U. S. 533, 567.
Applegate v. Mining Co., 117 U. S. 255.

III.

The record of the United States Circuit Court affirmatively discloses jurisdiction of both the subject matter and the parties and is therefore conclusive as to all the world.

Cases under Point II.

IV.

All the holders, including defendant in error and his assigns, of so-called annuity certificates, whether actually present in person or by attorney, were present and bound by the judgment through *virtual* or *class representation.*

Annotated Case, 1913 C, Am. & Eng. Ann. Cases, Vol. 28, p. 649. Note pp. 654-659.
Ruling Case Law, Vol. 20, pp. 669, 672; also Vol. 15, 1025.
30 Cyc., 140.
Smith v. *Swormstedt*, 16 How. 288, 302.
Liverpool & London & Globe Ins. Co. v. *Clunie*, 88 Fed. 160.
Wallace v. *Adams*, 204 U. S. 415.
Hartford Life Ins. Co. v. *Ibs*, 237 U. S. 662.
Royal Arcanum v. *Green*, 237 U. S. 531.
Corey v. *Sherman*, 96 Ia. 114.
Carlton v. *Southern Mutual Ins. Co.*, 72 Ga. 371.
Poole v. *Supreme Circle*, 85 Atl. 821.
Watson v. *Ins. Co.*, 162 Fed. 7.
M'Clelland v. *Rose*, 247 Fed. 721.
U. S. v. *Old Settlers*, 148 U. S. 427.
Levinese v. *Gas Co.*, 80 Atl. 304 (Ann. Case, 1913 C, 655).

The rule of virtual representation has been applied to a variety of classes, including:

(a) Persons interested in a common insurance fund, as here, raised by collections from persons similarly situated.

Hartford Life Ins. Co. v. *Ibs*, 237 U. S. 662.
Royal Arcanum v. *Green*, 237 U. S. 531.
Corey v. *Sherman*, 96 Ia. 114.
Carlton v. *Southern Mutual Ins. Co.*, 72 Ga. 371.
Poole v. *Supreme Circle*, 85 Atl. 821.

(b) Holders of insurance policies entitling them to certain sums at fixed times from a common profit fund.

Watson v. *Ins. Co.*, 162 Fed. 721.

(c) Bond holders.

Board of Commissioners v. *Call*, 123 N. C. 308.
Christian v. *Michigan Debenture Co.*, 134 Mich. 171.

(d) Preferred stockholders having liens on corporate assets.

Levviness v. *Power Co.*, (Md.) 80 Atl. 304, (Ann. Case, 1913 C).

(e) Common stockholders.

Wood v. *Dummer*, 30 Fed. Case, p. 435, No. 17944.
Noble v. *Land Co.*, 133 Ala. 250.
Blatchford v. *Ross*, 54 Barb. (N. Y.) 42.

(f) Creditors.

Libby v. *Norris*, 142 Mass. 246.
Burney v. *Morgan*, 1 Sim. & St. (Eng.) 358.
Bank v. *Lee*, 11 Conn. 112.
Hudson v. *Milling Co.*, 79 Tex. 401.

(g) To creditors also upon the theory that they are represented by the receiver.

Trust Co. v. *Traction Co.*, 188 Fed. 1006.
Painter v. *Painter*, 138 Cal. 231.
Johnson v. *Candage*, 31 Me. 28.
Cotton Co. v. *Smith*, 144 Mo. App. 169.
Whittlesey v. *Delaney*, 73 N. Y. 571.

(h) Customers of a water company.

Grafton v. *Holt*, 58 W. Va. 182.

(i) Persons not in *esse*, or whose interest is contingent or expectant.

Notes to *Denegre* v. *Walker*, 2 Ann. case, 787.
Miller v. *Railway Co.*, 132 U. S. 662.
McCampbell v. *Mason*, 151 Ill. 500.
Hermann v. *Parsons*, 117 Ky. 239.
Acord v. *Beaty*, 244 Mo. 126.
Sparks v. *Clay*, 185 Mo. 393.
Buckner v. *Buckner*, 210 S. W. (Mo.) 887, 888.

(j) Members of unincorporated associations.

Steel Co. v. *Unions*, 90 Fed. 598.
Whitney v. *Mayo*, 15 Ill. 251.
Goldman v. *Page*, 59 Miss. 404.
News Co. v. *Associated Press*, 248 U. S. 215.
Lilly v. *Tobbein*, 103 Mo. 477, 488.

(k) Members of the civilized tribes of Indians.

Wallace v. *Adams*, 204 U. S. 415, 425.

The Federal Court in the *Wagstaff* case determined that same was a *class* suit to which the rule of virtual representation was applicable. The court exercising the jurisdiction has discretion in determining whether a given case is one for the application of the rule, and when it decides that it is, its decree is conclusive in a collateral proceedings.

Smith v. *Williams*, 116 Mass. 510.
Flannigan v. *Land Co.*, 144 Fed. 371.
Toy v. *Hopkins*, 212 U. S. 542.
Manson v. *Duncanson*, 166 U. S. 533, 547, 548.

V.

The rights of plaintiff and his assignors were to a designated fund, and this fund and other assets of the corporation were seized and in the custody of the court. All persons having claims in and to said fund and assets were in legal effect in court and bound by the judgment by virtue of the seizure and their representation by the receiver.

Corpus Juris, Vol. 15, 802.
Herbert v. *Bicknell*, 233 U. S. 70.
Trust Co. v. *Traction Co.*, 188 Fed. 1006.
Painter v. *Painter*, 138 Cal. 231.
Johnson v. *Candage*, 31 Me. 28.
Whittlesey v. *Delaney*, 73 N. Y., 571.

VI.

Defendant in error prosecutes this action in the capacity of a *creditor*. He and his assignors were forever barred and foreclosed as creditors or otherwise by reason of their failure to present their claims to the master within the time prescribed by the court and the master's published notice for the presentation of all claims and demands of whatsoever character against the insurance company.

Halsted v. *Forest Hill Co.*, 109 Fed. 820.
Libby v. *Norris*, 142 Mass. 246.

VII.

The bill of complaint was filed by a number of agency stockholders in favor of themselves and all others similarly situated. It alleged *diversity of citizenship, mismanagement and insolvency* of the corporation, *avoidance of a multiplicity of suits* and certain *unlawful* and *ultra vires acts*, and prayed for a seizure and dis-

position of assets and for an adjudication and settlement of the rights of *all* persons having an interest therein. Bills of intervention were filed by certificate holders thereby, again bringing directly to the jurisdiction of the court the certificates and holders thereof. The assets of the defendant corporation were seized by the receiver and ordered sold by the court. The court clearly acquired jurisdiction of the subject matter.

Section 1, Act August 13, 1888, ch. 866, 25 Stat. L. 433. Now Section 24, Para. 1, ch. 2, Judicial Code, 4 Fed. St. Ann. (2nd Ed.) 839, 842.
Jacobs v. *Sugar Co.*, 130 Fed. 589.
Steamship Co. v. *Kane*, 170 U. S. 100.
Wells Co. v. *Mfg. Co.*, 198 U. S. 177.

(a) A Federal court which has possession of the property of an insolvent corporation by its receiver and is engaged in administering the trusts pertaining thereto, may entertain jurisdiction of *any claim by any one*, whose rights or interests would be affected by the action of the court in dealing with the property and administering the trust, without regard to the amount in controversy, the nature of the controversy, or the citizenship of the parties.

In re Tyler, 149 U. S. 164.
Rouse v. *Letcher*, 156 U. S. 47.
White v. *Ewing*, 159 U. S. 36.
McBee v. *Railroad Co.*, 48 Fed. 243.

(b) Even in cases where there is no federal question involved and no diversity of citizenship and where on an original bill brought for the same purpose there would be no Federal jurisdiction, yet where a Federal court has acquired jurisdiction over a corporation and has appointed a receiver to wind up its affairs, it has jurisdiction of *all* things pertaining to the corporation and all claims that may be asserted against it on the ground that such actions are ancillary to the original suit. The complete jurisdiction of the court over the res, the property and assets of the corporation, give such court the power to deal with and finally determine *any* claim against it and to determine all controversies of whatsoever character involved.

Peck v. *Elliot*, 79 Fed. 10, 47 U. S. App. 605, 24 C. C. A. 425.
Knox v. *Atwood*, 228 Fed. 753.
Bottom v. *Bldg. Association*, 123 Fed. 744.
White v. *Ewing*, 159 U. S. 36.
Betts v. *Bisher*, 213 Fed. 581.

(c) When jurisdiction once attaches, the court is bound to consider all issues properly presented and thereafter render judgment and decree on all.

Johnson v. *Johnson*, 225 Fed. 413.
Signal Co. v. *Trust Co.*, 236 S. W. 58.
Harnay v. *Haight*, 177 N. W. 281.

(d) Having acquired jurisdiction, which means merely the power to act or decide *at all*, the decision of *all other* questions arising in the case, and the right to act in the *particular* way in which the court did act, or render the particular judgment that it did render, or dispose of the rights of the parties in the manner it did dispose of them, was but the *exercise* of jurisdiction. A wrongful or defective execution of jurisdiction is *voidable only* and cannot be reached in collateral proceedings.

Collins v. *Williamson*, 229 Fed. 59.
Cooper v. *Reynolds*, 10 Wall. 308.
Herron v. *Dater*, 120 U. S. 464.
Exparte Watkins, 7 Pet. 568.
Schubach v. *McDonald*, 179 Mo. 163, 182.
State v. *Ware*, 145 Mo. 162.
Exparte Moran, 144 Fed. 594.
U. S. v. *Maney*, 61 Fed. 140.

VIII.

The judgment rendered in the Wagstaff case was not in excess of the jurisdiction of the court.

Julian v. *Trust Co.*, 193 U. S. 93.
Marks v. *Merrill Paper Co.*, 188 Fed. 850.
Leavenworth v. *Railway Co.*, 134 U. S. 688.
Harts v. *Brown*, 77 Ill. 226.
McClelland v. *Rose*, 247 Fed. 721.
Flannigan v. *Land Co.*, 144 Fed. 371.
Toy v. *Hopkins*, 212 U. S. 542.
Harnay v. *Haight*, 177 N. W. 281.
In re Rice, 155 U. S. 396, 403.
Signal Co. v. *Trust Co.*, 236 S. W. 58, 62.
Cases cited under a, b, and c, point VII *supra*.

Courts of equity, looking through forms to the substance of things, will ignore the legal fiction of distinct corporate existence, whenever it is necessary to do justice and preserve the rights of innocent parties.

Trust Co. v. *Carpenter*, 250 Fed. 668, 672, 677.
In re Gebbie, 167 Fed. 609, 613.

IX.

The defendant in error and his assignors should be held to be estopped to deny the effect upon them of the decree of the Federal court.

Sheets v. *Ramer*, 145 N. W. 787, 788.
Cronan v. *Wolfe*, 164 N. W. 1018, 1019.
Johnson v. *Gillett*, 168 Pac. 1031, 1033.
Jackson v. *Industrial Board*, 117 N. E. 705, 707. (Paragraphs 6, 7).
Kent v. *Mining Co.*, 78 N. Y. 159.
Halsted v. *Forest Hill Co.*, 109 Fed. 820.
Scoffins v. *Grandstaff*, 12 Kan. 467.

BRIEF OF THE ARGUMENT.

I.

Federal Question.

The dominant question involved in the instant proceeding is whether the United States Circuit Court had jurisdiction of the subject matter and parties in the equitable proceeding, entitled *"J. M. Wagstaff, et al.* v. *Great Western Agency Company, Great Western Life Insurance Company, et al,"* in equity #3367, wherein the causes of action sued upon by the defendant in error were fully and finally determined and adjudicated. If such Federal court had such jurisdiction, the judgment and decree rendered therein is a complete bar to the action prosecuted by defendant in error.

The defense of *former adjudication, i. e.*, that the judgment and decree of the United States Circuit Court was a bar to this action and that the causes of action sued upon were fully and finally determined and adjudicated by said United States Court, was raised and urged by answer, proof, timely declarations of law and motion for new trial in the trial court, and was thereafter specifically assigned as error, briefed and argued in the Supreme Court of the State of Missouri, and was made the determinative point of the decision of said State Supreme Court. The said decision of the Supreme Court of Missouri, being the one under review, declares as follows.

> "The questions raised on this appeal were passed upon by the trial court in refusing declarations of law asked by defendant—appellant here. Its principal contentions are * * * (3) that plaintiff's claims are *res adjudicata* under the decree of the United States Circuit Court lifting the receivership; and (4) that having acquiesced in the decree during the time of the reorganization of the Insurance Company and for four years thereafter, plaintiff's assignors and plaintiff through them are now estopped from asserting that its provisions are not binding upon them." (R. p. 364.)

and

> "The decree therefore, insofar as it attempted to cancel their certificates and destroy the rights incident thereto, was a nullity." (R. 368.)

and again

> "Appellant's next contention is that the original certificate holders, plaintiff's assignors, having had notice of the proceedings in the Federal court in the Wagstaff case are bound thereby and had no right or cause of action to transfer by assignment." (R. p. 368) * * * The essential elements of an estoppel such as is contended for are entirely lacking. Of course the plaintiff stands in the shoes of his assignors as to the claims assigned to him and he is no more estopped from asserting them than they would have been." (R. 369.)

It was likewise raised and urged in the motion for rehearing upon the decision of the State Supreme Court (R. pp. 371-377).

This defense and the decision thereon directly involve a right, privilege and immunity under the laws and Constitution of the United States, and under an authority exercised under the United States and the Constitution and laws thereof, and the decision of the State Supreme Court is *against* the right, privilege and immunity so set up. Primarily it was for the United States Circuit Court to determine its jurisdiction in the *Wagstaff* case, preliminary to taking final action therein, and this it did and found that it had jurisdiction of both the subject matter and the parties. Its record and judgment, which the Supreme Court passed upon, affirmatively disclose that said United States Court had such jurisdiction, but the decision of the Supreme Court of Missouri holds that said United States Court was without jurisdiction and that its judgment and decree was not binding but was, using the language of that court: "a *nullity*." This clearly presents a Federal question which this court will review and in so doing will determine for itself from the record whether or not the United States Circuit Court had jurisdiction of the subject matter and parties.

In *Cumberland Glass Mfg. Co. v. DeWitt*, 237 U. S. 447, this court said:

> "Summing up the defenses made in the State Court, the Maryland Court of Appeals said (120 Md. 386): 'The defendant interposed three pleas—first, that it did not commit the wrong alleged; secondly, limitations; thirdly, *res judicata*, based upon certain proceedings had in the United States District Court for Maryland, and particularly set out in the pleas.'
>
> "The Federal question, which is the basis of jurisdiction here, arises upon the pleas of *res adjudicata* to which a demurrer was sustained in the Maryland court of original juris-

diction, which judgment was affirmed by the Court of Appeals. This presents a Federal question because the plea of former judgment in a Federal court adjudicating a right of Federal origin asserts a right which, if denied, made the case reviewable here * * *"

Tullock v. *Mulvane*, 184, U. S. 497:

"A reference to some of the decided cases concerning what constitutes a claim of immunity arising from an authority exercised under the United States will serve at once to refute the contention that no Federal question is here presented.

"In *Dupasseur* v. *Rochereau*, 21 Wall 130; 22 L. Ed., 583, the question for decision was whether a State court had given due effect to a decree of a court of the United States, and it was asserted that the contention that it had presented no Federal question. Speaking through Mr. Justice Bradley, the court said (131 L. Ed. p. 590):

" 'Where a State court refuses to give effect to the judgment of a court of the United States rendered upon the point in dispute, and with jurisdiction of the case and the parties, a question is undoubtedly raised which, under the Act of 1867, may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United States, establishing the Circuit Court and vesting it with jurisdiction, and hence it would be within the judicial power of the United States, as defined by the Constitution, and it is clearly within the chart of appellate power given to this court, over cases arising in and decided by the State courts.' "

Crescent City Live Stock, etc. Co. v. *Butchers' Union Slaughter House, etc. Co.*, 120 U. S. 141:

"This is a writ of error bringing into review a judgment of the Supreme Court of the State of Louisiana, reported in 37 Louisiana Annual Reports, 874. The Federal question arising upon the record presented for our consideration is, whether the Supreme Court of Louisiana in its determination of the case gave due effect to a certain decree of the Circuit Court of the United States for the Eastern District of Louisiana, in a previous litigation between the same parties. * * * * * * * * * * *

"It must therefore be conceded that the sole question to be determined is, did the Supreme Court of Louisiana, in deciding against the plaintiffs in error, give proper effect to

the decree of the Circuit Court of the United States, subsequently reversed by this court?

"It is argued by counsel for the defendant in error that this does not embrace any Federal question; that the effect to be given to a judgment or decree of the Circuit Court of the United States sitting in Louisiana by the courts of that state is to be determined by the law of Louisiana, or by some principle of general law as to which the decision of the State court is final, and that ruling in question did not deprive the plaintiffs in error of 'any privilege or immunity specially set up or claimed under the Constitution or laws of the United States.' But this is an error. The question whether a State court has given due effect to the judgment of the court of the United States is a question arising under the Constitution and laws of the United States, and comes within the jurisdiction of the Federal courts by proper process. * * * It may be conceded, then, that the judgments and decrees of the Circuit Court of the United States, sitting in a particular state, in the courts of that state are to be accorded such effect, and such effect only, as would be accorded in similar circumstances to the judgments and decrees of a state tribunal of equal authority. But it is within the jurisdiction of this court to determine, in this case, whether such due effect has been given by the Supreme Court of the United States here drawn in question."

Phoenix Fire & Marine Insurance Co. v. *Tennessee*, 161 U. S. 174:

"It is entirely different from the case of a refusal of a State court to give the proper effect to a judgment of a court of the United States. If a State court erroneously refuses to give such weight and effect to a judgment of one of the courts of the United States a Federal question arises, which is within the jurisdiction of this court to review upon writ of error to the Supreme Court of the State."

Where a United States court has assumed and exercised jurisdiction of a cause, and rendered a final judgment and decree therein, and where a State court declares such judgment and decree to be a nullity upon the ground that said United States court had no jurisdiction of either the subject matter or the parties, this court will determine for itself, from the record of said United States court, whether the same had jurisdiction and whether its judgment was a nullity, and will not relegate to the State court the power to determine these questions or either of them, for otherwise, an

erring State court could foreclose the jurisdiction of this court and effectively deny full effect, faith and credit to judicial proceedings of the United States courts by merely finding that in point of fact or law the Federal court did not have jurisdiction, and this notwithstanding the decision of such Federal court to the contrary.

Under any other practice the constitutional power and duty of this court to compel obedience to the constitutional mandate requiring State courts to give full faith, effect and credit to judicial proceedings of the United States courts would be effectively thwarted and in many instances wholly defeated.

In *Julian* v. *Central Trust Co.*, 193 U. S. 93, at page 103 the court said:

> "This decision of the highest court of the State was made after the rights of the Southern Railway Company, whatever they may be, had accrued in the property and franchise of the Western North Carolina Railroad Company, and, while entitled to the highest respect and consideration, is not conclusive upon this court in determining the rights secured to the purchaser under the decree of foreclosure in the Federal court. *Burgess* v. *Seligman*, 107 U. S. 20."

and at page 114, *supra*:

> "While recognizing the weight which should be given to decisions of the Supreme Court of a State in construing its own laws, and being disposed to follow them and accept the conclusions reached in construing local statutes in every case of doubt, we are here dealing with a right and title conferred by authority of a decree of a Federal court, which may be virtually set aside and held for naught if the property awarded can be taken upon execution in suits to which the purchaser is not a party. It is conceded that the Federal right could be set up in a state court from the execution issued, and, if denied, the ultimate rights of the parties can be determined upon writ of error to this court."

II.

A Collateral Proceeding.

Defendant's petition in this case is collateral. It does not seek the correction of alleged errors in the proceedings or decree of the United States Circuit Court. Its avowed object is to have such proceedings and decree declared null and void, upon the ground that it was taken in a court without jurisdiction of either the person

or the subject matter, and it attempts this in an *independent collateral proceedings* in another court of entirely different jurisdiction. It proposes to drive a fatal blow at the rights, claims and immunities established by the decree of the United States Circuit Court. The situation presented by this cause is well stated in *Cornue* v. *Ingersoll*, 176 Fed. 194, 197:

> "* * * Such being their claim, the complainants could not have expected or even hoped to prevail in an independent proceeding in the state courts, except upon the hypothesis of the judgment based upon findings and holdings that the express terms of the decree of the Circuit Court, entered in accordance with the opinion of the Supreme Court, were invalid and inoperative in respect to the property in question.
>
> It was plainly the purpose to secure a result in another court which would wholly prevent the execution of the decree of the Circuit Court of the United States. With that purpose, the complainants invoke independent collateral proceedings in another court, through which it is intended to drive a fatal blow at the right established by the decree of the Circuit Court. Indeed, the purpose is made quite plain by the allegations and prayers, which plainly mean, if they prevail, a complete and effective overthrow and nullification of the operative effect of the decree of the Circuit Court in respect to the property right which it assumed, in clear and unmistakable terms, to declare and establish. If such process is possible by way of collateral attack, the inevitable result would be a direct conflict between two courts, and direct conflict between their final decrees directed against the same specific property, because the decree of the Circuit Court assumes to define the status of the property right, and the decree sought in the State Court is one which would completely nullify, not only the operativeness, but the express terms, of the decree of the Circuit Court, which was a court of competent jurisdiction, and one which had first assumed control over the subject matter in controversy.
>
> To the proposition that the subject matter of the controversy in question was something which might be dealt with finally and effectually in the federal courts, it is only necessary to refer to the recent decision of the Supreme Court in *Waterman* v. *Canal-Louisiana Bank*, 215 U. S. 33, 30 Sup. Ct. 10, 54 L. Ed. (Dec. 1909), and to the familiar general rule that, as between two courts of competent jurisdiction, the one which first assumes jurisdiction over a controversy will hold it for the purpose of ascertaining and establishing the converted rights.

These proceedings, notwithstanding the proper jurisdiction of the federal courts, seek in the end to seize and hold a property now in the custody of the Probate Court of Massachusetts notwithstanding, and in violation of, a final decree entered against it in accordance with the decision of the Supreme Court of the United States, in which that court declared a right in respect to the same property which it specifically described and named. Thus, at their inception, they seek a result in a collateral proceeding which would utterly set at naught the authority of the Supreme Court sought to be enforced, with respect to subject matter over which it had assumed jurisdiction, and in respect to a right which it had assumed to establish, through a final decree entered under its direction at the end of the litigation. Independent proceedings to such an end would be subversive of judicial authority; and a rule which would permit it would put at unrest and in disorder rights supposed to have been settled and established by courts of competent jurisdiction and of last resort."

III.

Presumptions Attending Judgment.

The decision of the state court declaring the judgment of the United States Circuit Court a nullity is based upon the theory that there was no jurisdiction of the *parties*. Anent this question it may not be amiss to observe that the state court reverses, or at least ignores, the rule and effect of correct legal presumptions, uniformly indulged in cases of collateral attacks upon judgments of courts of general jurisdiction, which includes judgments of the United States courts.

Cuddy, Petitioner, 131 U. S. 280, 285,

> "* * * And in *Galpin* v. *Page*, 18 Wall. 350, 365, the court said: 'It is undoubtedly true that a superior court of general jurisdiction, proceeding within the general scope of its powers, is presumed to act rightly. All intendments of law in such cases are in favor of its acts. It is presumed to have jurisdiction to give the judgments it renders until the contrary appears. And this presumption embraces jurisdiction not only of the cause or subject matter of the action in which judgment is given, but of the parties also.' "

As it is the first duty of all courts to keep strictly within the limits of their jurisdiction, any affirmative action on the part of a court implies that it has ascertained it has jurisdiction and that

every step necessary to give such jurisdiction has been taken. Having primarily the power and jurisdiction to decide as to its own jurisdiction in any particular case, and particularly, where the jurisdiction depends upon a fact which it is required to ascertain, its judgment determining that such fact and jurisdiction do exist is conclusive on the question until set aside or reversed upon an appeal or direct review (*Toy* v. *Hopkins*, 212 U. S., 542; *Flannigan* v. *Land Co.*, 145 Fed., 371; *Manson* v. *Duncanson*, 166 U. S. 533, 547, 548; *Applegate* v. *Mining Co.*, 117 U. S., 255). These presumptions are indulged even in cases where the record is silent on the point of jurisdiction and are overcome only when the record affirmatively discloses the absence of jurisdiction, and this is true with reference to the parties as well as the subject matter of the action.

IV.

Court Had Jurisdiction of Person.

The United States Circuit Court in the *Waystaff case* had jurisdiction of *all* the annuity certificate holders, including defendant in error and his assignors, and all were bound by the judgment and decree rendered therein, *because*:

A. Not only does the contrary not appear, but the record of that court affirmatively shows the presence of all such annuity certificate holders and a final adjudication and disposition of the rights of *all* such holders.

B. They were numerous, consisting of approximately five hundred and belonging to one *common class*. Their rights were identical and the returns to which their certificates entitled them were to be created by the same means and paid from one *community* fund. No action could affect one without likewise and identically affecting each and all, and no court could ascertain, determine and fix the rights of one without considering every question and phase involved in or that could be presented by the others. It was a true case for the application of the doctrine of *virtual representation*.

C. They were present and bound through the *seizure* of the fund and assets in which they were jointly interested and through the *receiver* as their representative.

D. As *creditors* or otherwise they were precluded through the notice of the master to all persons to present their claims, and their subsequent failure to present claims.

Record affirmatively recites and shows presence of all certificate holders.

A. The record affirmatively discloses that after the United States Court had made an order for the sale of the assets of the insurance company, objections and exceptions were made thereto by the stockholders of the agency company and the annuity certificate holders of the insurance company, and that such stockholders and annuity certificate holders presented of record a prayer and plan under which the assets might be sold to a reorganized company. In this connection the record of the court affirmatively shows the following:

> "Now on this 15th day of August, 1908, being one of the regular days of the April 1908 term of said court, the above cause came on to be heard upon the application of the receiver for the confirmation of the sale of the assets, properties and business of the Great Western Life Insurance Company * * *; the receiver, C. S. Jobes, Esquire, appearing in person and by his solicitor, E. L. Scarritt, Esquire; the Kansas City Life Insurance Company, a bidder, appearing by R. J. Ingraham, its solicitor; the Philadelphia Life Insurance Company, a bidder, appearing by W. F. Guthrie, its solicitor; the National Bank of Commerce, a creditor, appearing by H. C. Ward, its solicitor, and F. M. Pearl, and other stockholders of the Great Western Agency Company *and annuity certificate holders of the Great Western Life Insurance Company who are similarly situated, appearing by B. P. Waggoner and James W. Orr*" (R. pp. 159-160).

The final judgment and decree rendered in said United States Court and which is now under review affirmatively shows the following record entry:

> "Now on this 27th day of August, 1908, being one of the regular days of the April, 1908, term of said court, come on further to be heard the *objections* and exceptions of F. M. Pearl and other stockholders of the Great Western Agency Company and *annuity certificate holders of the Great Western Life Insurance Company* to the confirmation of the sale of the assets, properties and business of the said Great Western Life Insurance Company * * *; Franklin Adams, J. Q. Cowee

and other interveners appearing by A. L. Cooper, Esquire, their solicitor; *said objectors appearing by E. A. Berry*, Esquire, *James W. Orr, Esquire, their solicitors;* * * * and *A. F. Sherman*, Esquire, *appearing for himself and certain other annuity certificate holders*" (R. pp. 152, 153).

Said final order and judgment further contains the following:

"Whereas it has further been the plan of said reorganization of the said life insurance company to permit *holders of so-called annuity certificates heretofore issued* by said life insurance company, upon the payment of the sum of $37.50 upon each share of said certificates and upon the surrender and cancellation of such certificates to receive of the capital stock of the said life insurance company stock of the said company of the par value equal to one-half of the amount of such payment.

Certain certificate holders have already agreed to this, *aggregating more than one-half thereof*, and *all* such annuity certificate holders who have not done so are hereby given the privilege of so doing for twenty days from date hereof, to avail himself of such privilege, and *any such* annuity certificate holder failing to so avail himself within such period of time of twenty days from this date shall no longer have such privilege or right and *such* annuity certificate holders shall thereafter be barred * * * and *such* annuity certificates will then and thereby be fully cancelled in law and in equity, and *such* annuity certificate holders will have no further rights, claims or demands against said company its officers, stockholders, assets or property on account thereof" (R. 155).

The said final judgment and decree contains also the following:

"A. F. Sherman (defendant in error here) holds annuity certificates, face value $1500. On account thereof he gave his note for $1250, which he has not paid. The said Sherman is hereby given the privilege of surrendering said annuity certificates as fully cancelled upon the receipt by him of said note, in which event he, the said Sherman, will retain any dividend heretofore paid him on account of said certificates, and he will have no claim against said company for any money he paid for said certificates. And the same right, and privilege and burden is hereby given to and cast upon *any other annuity certificate holder* who has given a note or notes on account of annuities" (R. 158).

(All of the above italics and words in parenthesis ours.)

It will be observed that the record of August 15th (Rec. 159, 160) contains the entry:

> "And annuity certificate holders of the Great Western Life Insurance Company who are *similarly situated*, by B. P. Waggoner, James W. Orr."

and that the final judgment and decree in that case contains the following record entry:

> "Come on further to be heard the objections and exceptions of F. M. Pearl * * * *and annuity certificate holders* of the Great Western Life Insurance Company to the confirmation of the sale * * * by E. A. Berry, Esq., James W. Orr, Esq., their solicitors * * * and A. F. Sherman, Esq., appearing for himself and certain other annuity certificate holders" (R. 152, 153).

The words and terms of these record entries affirmatively disclose that the annuity certificate holders were appearing for different purposes and at different stages of the proceedings, through *either E. A. Berry, James W. Orr, B. P. Waggoner* or *A. F. Sherman.* The terms of the judgment and decree themselves affirmatively show that the court was dealing with and disposing of the interests and claims of *all* the annuity certificate holders. It thus affirmatively appears that that court found that *all* the annuity certificate holders were present, either in person or by representative, and indulging the presumptions which uniformly attend such judgments, it must be *conclusively* presumed in a collateral proceedings that *all* such certificate holders were actually present or duly represented. Even though this recognized presumption should be not applied, and it were held that these record entries are not *conclusive*, they are undoubtedly sufficient to show the jurisdiction, unless there is affirmative proof to the contrary. At no stage of the instant proceeding did any certificate holder testify that he was not actually present or duly represented in the proceedings in the United States Circuit Court. Not one of defendant's assignors appeared and so testified. As heretofore pointed out the record of the proceedings affirmatively shows the appearance of the annuity certificate holders through E. A. Berry, James W. Orr, B. P. Waggoner and A. F. Sherman. Neither Mr. Waggoner nor Mr. Berry testified in this case at all, and there is nothing in the record even tending to show that these solicitors did not represent all of the certificate holders that were not represented by either Mr. Orr or Mr. Sherman. Mr. Orr was produced as a witness but did not testify as to the certificate holders whom he represented or did not represent (R. 321,

333). Mr. Sherman *alone* gave testimony as to the certificate owners he did not represent, testifying merely that *he* did not represent any of the assignors of the certificates on which he was basing this cause (R. 316).

The conditions of the record in the instant case then is that it not only affirmatively appears that all the certificate holders were actually present or duly represented but there is absolutely no evidence to the contrary, nor tending in the remotest measure to contradict the record entries and the legal presumptions attending them.

All certificate holders present and bound through virtual representation.

B. As an exception to the rule that all persons having an interest in the subject matter of an equity suit must be made parties is the doctrine of *virtual representation*. Under this doctrine the persons who are not joined by name, or actually present, are parties through representation. The reason or principle of such doctrine is that if persons are required to be made parties merely as owners and protectors of a certain interest, then the proceedings may take place with an equal prospect of justice if that interest receives protection at the hands of others. The doctrine is further founded upon considerations of practical convenience and is necessary in many cases to avoid a denial of justice. Where the parties are numerous, their rights and liabilities are subject to change and fluctuation by death or otherwise and they are frequently widely scattered and in different jurisdictions, and were it not for this rule it would be impractical and inconvenient to bring them into court and would oftentimes prevent the prosecution of a suit to a hearing and would result in denial of substantial justice.

The doctrine of virtual representation originated at an early date and has for a long time been recognized both here and in England. Under this doctrine persons who are not joined by name as parties are in a proper sense before the court. They have sometimes been called *quasi* parties and are held to be parties in substance and legal effect. In cases to which this doctrine is applicable the court can make its judgment effective not merely upon the individuals to the record but also upon the class represented by them. It is particularly applicable, among others, to the following classes of cases:

1. Where the parties interested are numerous so that it would be impracticable or inconvenient to make all of them direct parties.

2. Where the interested persons are members of a common class, having the same or similar individual interests, and where the question presented is common to all and those present may fairly be said to represent the rights and interests involved so that all such rights may be fairly and fully tried. Numerousness under this particular class is not essential to the application of the rule.

As appears from the numerous cases cited in our brief, the doctrine has uniformly been applied to:

1. Persons interested in a common insurance fund raised by collections from policy holders.
2. Holders of insurance policies entitling them to certain sums at fixed times from a profit fund.
3. Preferred stockholders, who by statute or otherwise, have liens on the corporation's assets.
4. Bondholders.
5. Common stockholders.
6. Creditors.
7. Insurance companies whose claims arise from some common cause and may be determined in one action.
8. Customers of a water company.
9. Members of unincorporated associations.
10. Persons not *in esse*, or whose interest is contingent or expectant.
11. Also to creditors upon the theory that they are represented by the receiver.

In *M'Clelland* v. *Rose*, 247 Fed., 721, at page 723 it is said:

"From the fact that ones name does not appear as a party to a suit in equity, it does not necessarily follow that he is not bound by the result of it. There are cases involving a subject matter common to a number of individuals in which some only of such individuals, who in fact are representatives of the entire class of which they are members, may be permitted to sue or defend for all, with the result of making the judgment or decree rendered binding upon all having the common interest the same as if all were before the court. *Hartford Life Ins. Co.* v. *Ibs*, 237 U. S. 662, 672, 35 Sup. Ct. 692, 59 L. Ed. 1165, L. R. A. 1916A, 765; *Wallace* v. *Adams*, 204 U. S. 415, 27 Sup. Ct. 363, 51 L. Ed. 547; *Smith* v. *Swormstedt*, 16 How. 288, 14 L. Ed. 942; *Mandeville* v. *Riggs*, 2 Pet. 482; 487, 7 L. Ed. 493; *Hale* v. *Hale*, 146 Ill. 227, 258, 33 N. E. 858, 20 L. R. A. 247; *Society of Shakers*

v. *Watson*, 68 Fed. 730, 15 C. C. A. 632; *Stevens* v. *Smith*, 126 Fed. 706, 61 C. C. A. 624, Equity Rule 38 (198 Fed. xxix 115 C. C. A. xxix)."

also at page 724, *supra*, it is said:

"Where it is fairly made to appear by the allegations of a bill that such an adjudication is sought as will be effective, not only against those who are brought before the court as defendants, but against others similarly related to the subject of dispute, it is not necessary to aver in terms that those who are made defendants are sued as representatives of the class of which they are shown to be members, especially when it is disclosed that those who defend contest the plaintiff's claim by setting up the claim that the subject of the suit belongs in common to an entire class which they admit does or may include others besides themselves."

In *Hartford Life Insurance Co.* v. *Ibs*, 237 U. S., 662, it is said at page 672, dealing with an insurance fund similar to the one here involved:

"For, in order that the decree should be binding upon those certificate holders who were not actually parties to the proceeding, it had to appear that Dresser and the other complainants had an interest that was, in fact, similar to that of the other members of the class, and that it was impracticable for all concerned to be made parties. But, when such common interest in fact did exist, it was proper that a class suit should be brought in a court of the state where the company was chartered and where the Mortuary Fund was kept. *The decree in such a suit*, brought by the company *against* some members, as representatives of all, was brought against the company by *thirty certificate holders* for 'the benefit of themselves and all others similarly situated,' *would be binding upon all other certificate holders* (Italics ours).

Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and main-

tained.' *Smith* v. *Swormstedt*, 16 How. 303. See also *Hawkins* v. *Glenn*, 131 U. S. 330; *Bealls* v. *Ill. R. R.*, 131 U. S. 290; *Kerrison* v. *Stewart*, 93 U. S. 155; *Supreme Council of Royal Arcanum* v. *Green*, this day being decided, *ante* p. 531. The principle is recognized both in England and in this country. 1 Pomeroy Eq. Jr. (3d ed.). Figures 267, 268. In *Corey* v. *Sherman*, 96 Iowa, 114, and *Carlton* v. *Southern Mutual Ins. Co.*, 72 Ga. 371 (2); 379 (5-10), *the rule was applied in cases involving the rights of those interested in mutual insurance funds raised by collections from many policy holders*" (Italics ours).

In *Liverpool & London & Globe Ins. Co.* v. *Clunie*, 88 Fed. 160 the court said at page 167; also involving an insurance fund:

"* * * a court of equity will, in a single suit, take cognizance of a controversy, determine the rights of all the parties, and grant the relief requisite to meet the ends of justice in order to prevent a multiplicity of suits, where a number of persons have separate and individual claims and rights of action against the same party, but all arise from some common cause, are governed by the same legal rule, involve similar facts, and the whole matter may be settled in one action brought by all these persons uniting as co-plaintiffs. Pomeroy Eq. Jr. Figures 243, 245, 255, 269; *Libby* v. *Norris*, 142 Mass. 246; 7 N. E. 919; *Osborne* v. *Railway Co.*, 43 Fed. 824; *Railway Co.* v. *Gibson*, 85 Ga. 1, 11 S. E. 442; *Sang Lung* v. *Jackson*, 85 Fed. 502, 504; *Smuth* v. *Ames*, 169 U. S. 466, 18 Sup. Ct. 418."

In *Watson* v. *National Life & Trust Co.*, 162 Fed. 7, at page 11 it is said:

"Counsel for defendants make an interesting argument to show that the rights of the complainants, including the interveners, are separate and distinct.

* * * This is a bill in equity to secure an accounting of a trust fund in which all of the complainants claim to be interested. * * *

It is next contended that this is not a case where the unnamed similarly situated persons can appear or become proper parties by representation. There can be no doubt that the complainants who appeared by name and set forth their ground for relief are proper parties, and whether the unnamed persons similarly situated are made so or not does not necessarily arise on the demurrer, which is alone before us for consideration. There, however, can be no doubt that in a case of this kind, where the parties interested are numerous,

running, according to the averments of the bill, into thousands, they may, and properly should, be represented by a portion of their number. The general rule is that all parties interested in a trust fund are ordinarily required to be brought before the court which is administering it. But Story Eq. Pl. (10th ed.) Figure 95, recognizes an exception to this rule, founded, as he says, 'on the mere fact of numerousness when it may amount to a great practical inconvenience or positive obstruction of justice.' He there specifies the exceptions to the rule, among which he mentions cases 'where the parties are very numerous, and although they have or may have separate and distinct interests, yet it is impracticable to bring them all before the court.' The Supreme Court of the United States in *Smith* v. *Swormstedt*, 16 How. 288, 302 *et seq.*; 14 L. Ed. 942, recognizes the same rule and exceptions. Mr. Justice Nelson, speaking for the court, said:

> 'The rule is well settled that where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of others * * * where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained.'

The same doctrine is approved in *U. S.* v. *Old Settlers*, 148 U. S. 427, 480, 13 Sup. Ct. 650, 37 L. Ed. 509; *Williams* v. *Bankhead*, 19 Wall. 563, 571, 22 L. Ed. 184."

Wallace v. *Adams*, 204 U. S. 415, 425:

> "The other question is one of procedure, and not of power. It is objected that the defendant, Hill, was not made a party to the proceedings instituted in the citizenship court, but there were a multitude, according to the report of Dawes Commission, probably 1000, in whose favor judgments of citizenship have been entered in the Indian Territory courts, and the act provided that ten should be selected

as representatives of the class. It further authorized any individual, in case of an adverse judgment by the citizenship court, to transfer his case from the territorial to that court. Now, it is undoubtedly within the power of a court of equity to name as defendants a few individuals who are in fact the representatives of a large class having a common interest or a common right—a class too large to be all conveniently brought into court—and make the decree effective not merely upon those individuals, but also upon the class represented by them. *Mandeville* v. *Riggs*, 2 Pet. 482, 7 L. Ed. 493; *Smith* v. *Swormstedt*, 16 How. 288, 14 L. Ed. 942; *Bacon* v. *Robertson*, 18 How. 480, 499; 15 L. Ed. 499, 504; *U. S.* v. *Old Settlers*, 148 U. S. 427, 480, 37 L. Ed. 509, 529, 13 Sup. Ct. Reports, 650."

The so-called annuity certificates, with which the United States Circuit Court was dealing in the Wagstaff case, provided that the Insurance Company would apportion and pay to the owner, or his heirs, an annuity of one share of the proceeds of twenty-five cents for $1000 of all insurance, except reinsurance, written by the company in the United States during a designated period, and that the annuity payable under each certificate should be determined as follows (R. p. 112):

> "The aggregate of said twenty-five cents per $1000 of insurance shall be ascertained at the end of each calendar year, and such sum divided by
>
> Five Hundred,
>
> the quotient obtained shall be the apportionment to each of said shares and the total of one shares thereof shall be the annuity payable within thirty days thereafter."

After the certificates were issued some of them were amended by providing that the so-called annuity should be payable only out of the surplus earnings of the company. Except for this amendment to some of the certificates after they were issued, and except as to the date, name and amount, all the certificates were identical in form and provided and prescribed the same payments, benefits and rights, and from the safe fund. This appears not only from the certificates themselves but also from the stipulation of defendant in error (R. 111).

The fund out of which the certificate holder could receive any money was a *community* fund, a proportionate interest in which each certificate holder would own an interest in proportion to the

number of certificates he held. The amount of this community fund depended upon the amount of insurance written by the company and this community fund was owned jointly by the certificate holders up to and until it was divided as prescribed in the certificates. It is undisputable that if the company at any prescribed date of distribution had failed or refused to make distribution as per the terms of the certificates any one or more of these certificate holders could have brought and maintained a suit on behalf of himself and all other certificate holders, asking the court to divide the fund among the certificate holders, whether actually in court or not. (*Hartford Life Ins. Co.* v. *Ibs*, 237 U. S. 662; *Royal Arcanum* v. *Green*, 237 U. S. 531; *Corey* v. *Sherman*, 96 Iowa, 114; *Carlton* v. *Southern Mutual Ins. Co.*, 72 Ga. 371; *Poole* v. *Supreme Circle*, 85 Atl. 821; *Watson* v. *Insurance Co.*, 162 Fed. 7).

These cases so expressly hold and apply the rule without regard to whether the parties are plaintiffs or defendants. In the instant case the interest and right of each certificate holder was the same as the interest of all others and the rights of no one holder could be fully determined without considering every question that could be presented by all. Theirs was truly a joint and community interest. Their class consisted of approximately 500 members, there being substantially that number of certificate holders, and they were scattered principally over Missouri, Oklahoma, Texas and Kansas.

The final judgment and decree rendered in the *Wagstaff* case (Rec. 155) recites that *more than one-half* of the certificate holders had up to that time appeared and agreed to the plan of reorganization and sale which the court adopted. The proof in the instant case affirmatively and without contradiction shows that approximately eighty-five per cent of the five hundred certificate holders appeared and joined in the plan of sale and reorganization, and that such number joined while the court had and was still retaining jurisdiction of the entire cause.

This community fund and the interest and rights of all certificate holders in and to the fund, and all rights and claims created by the certificates, or the payment of money therefor, were brought directly to the notice and jurisdiction of the court by the various pleadings and the affirmative action of the court thereon. Intervening petitions and claims, including the intervening petition of defendant in error himself, were filed in the court in that case, and certificate holders appeared in court as objectors to the bids which

had been made for the assets and to a confirmation of the proposed sale to other insurance companies. The various orders and judgment of the court deal expressly with the rights of *all* the certificate holders. Such orders and judgment affirmatively show that the court exercising the jurisdiction found, in both point of fact and law, that that was a case of class representation, even if it be said that all of the certificate holders were not personally present. The court dealing with the situation and having before it all the facts and being in a position to know and judge the situation, should be and is allowed a wide discretion in determining whether a given case is one for the application of the doctrine of virtual representation, and in a collateral attack its judgment on this question is not open. (*Smith* v. *Williams*, 116 Mass. 510; *Flannigan* v. *Land Co.*, 144 Fed. 371; *Manson* v. *Duncanson*, 166 U. S. 533, 547, 548; *Toy* v. *Hopkins*, 212 U. S. 542.)

The situation at the time the Wagstaff judgment was rendered met every test and requirement of the rule of virtual representation. In fact, it fully met the requirements of two different tests, although it was sufficient that it meet but one. There was not only numerousness of parties with consequent inconvenience and impractability of compelling the appearance of each, but there was also community and identity of interest duly, fairly and fully presented, determined and protected. A largely attended meeting of the stockholders of the agency company and the certificate holders of the insurance company was held, much publicity having been given thereto, and a committee was appointed and attorneys employed to represent and protect the interest of *all* such stockholders and certificate holders in the proceedings pending in court. The plan of re-organization and the sale to the reorganized company and its new and entirely changed set of stockholders was itself proposed and urged by such certificate holders, and at the time the court adopted said plan *more than one-half* of the five hundred certificate holders had voluntarily joined in such plan and became active and moving parties to the court proceedings, and before such proceedings terminated about eighty-five per cent of the five hundred certificate holders accepted and participated in same. Surely under such circumstances such a number was sufficient to represent, present and protect the interest of all and of any not actually present, if there were any such.

Relative to the number of persons which may properly represent a class, it is said in *Hodges* v. *Nalty*, 104 Wis. 464, 468; 80 N. W. 726:

"Seventy-five persons is surely a very large and unwieldy number of persons to join in an action when it is practicable for a few to settle the controversy for the benefit of all. A line must be drawn somewhere, and, while it may be difficult to draw it at any precise number, we hold that seventy-five is a sufficient number in a case like the present to justify the court in allowing one or more to sue for all. See note to *Phipps* v. *Jones*, 59 Am. Decisions, 708."

In *Hartford Life Ins. Co.* v. *Ibs*, 237 U. S. 662, this court held thirty-five sufficient. Not only is it clear that from one-half to eighty-five per cent of the five hundred certificate holders was a sufficient number for the purpose of representing and protecting all, but it is shown by the record beyond doubt that the interest and rights of *all* the certificate holders were in *fact* presented, considered and protected. *Every* certificate holder, whether personally present or not, was found and declared by the court to be upon the same basis and to have the same rights, *and by a stipulation entered into by the parties hereto this fact is conceded* (R. p. 111), and *each and every one of them*, whether personally present or not, was given by the judgment *identically the same* privileges, protection and relief. Could there be found in practice, or among the adjudicated cases, a case to which the rule of class or virtual representation could more properly and fairly be applied? Could the situation confronting the United States Circuit Court at the time have been fully met and the issues and interests involved finally determined, except by adjudicating the rights and interests of *all* these certificate holders, and would not any other course have resulted in the denial of justice and a failure of a hearing for those entitled thereto.

The record shows that every effort was made to protect the interest of each and every certificate holder and that *all* of them were treated exactly alike. That all might be fully advised of the entire situation and what was being done for the protection of their rights, there was sent through the United States Mail, postage prepaid, to the last known address of each certificate holder, a letter giving full information as to the proceedings in court and the proposed plan of reorganization. A circular entitled "Fair Play" was likewise mailed to each certificate holder. These letters were mailed ten days prior to the time the judgment here assailed was rendered. The presumption is that the letters thus mailed and the information which they contained were received by the certificate holders. (*Phoenix Ins. Co.* v. *Schultz*, 80 Fed. 337;

Davidson v. *U. S.*, 142 Fed. 315, 318.) From this it follows that each certificate holder had actual notice of the proceedings and of the manner in which he was being represented, and of the identity of the persons who were representing him, and the record shows that no objection whatever was made thereto.

The defendant in error was himself one of the certificate holders at the time, and duly appeared for himself and other certificate holders and prayed for and obtained, not only in behalf of himself and those for whom he was directly appearing, but also in behalf of *all* certificate holders similarly situated, the relief and judgments to which he thought *all* such were entitled. By the averments of his own interplea and by the relief which he sought and obtained for all others similarly situated, he himself recognized the case as a class case and one to which the doctrine of virtual representation was applicable. He should not now in a collateral proceeding be countenanced in a directly contrary position. This follows without regard to whether the doctrine of equitable estoppel is or is not applied to him.

All certificate holders present and bound through seizure of property and presence of receiver.

C. All the certificate holders were also present and bound by the judgment and by virtue of the *seizure* of the profit fund from which alone they could under their certificates receive benefits and by virtue of the seizure of the written insurance upon which their benefits and returns depended. As heretofore stated, these certificates entitled the holders to a proportionate part of a community fund and the amount of this fund depended upon the insurance written and paid for. Defendant himself, both in the trial court and the State Supreme Court, took the position, and in this he was sustained by the State Supreme Court (Rec. p. 366), that at the time the proceedings in the Federal court were pending neither the insurance company nor the certificate holders had attempted to repudiate the certificates or to claim any rights or benefits except such as were provided for by the *certificates themselves*. Even up until the time the present suit was filed defendant in error and his assignors were basing their claims *upon* the certificates and not for the money paid therefor (His letter, R. 118, 363).

The situation, then, at that time was that rights under the certificate, as distinguished from alleged rights following a repudia-

tion thereof, were the rights that the certificate holders were asserting, and these were alleged rights to a fund and assets which had been duly seized by the receiver under orders from the court; and such fund and assets were then in the hands and custody of the court through its receiver. The receiver was in the position of a representative of this fund and these assets, and every person claiming an interest therein was in legal effect duly present and represented by and through the receiver and by reason of the presence in court of the fund and assets to which their alleged claims related. Corpus Juris, Vol. 15, 802; *Herbert* v. *Bichnell*, 233 U. S. 70, and other cases cited under point .... of our brief.) Not only does this result from the doctrine that the seizure of the thing in which the parties are interested brings them into court, but also from the application of the doctrine of virtual representation that such parties are present through the representation given them by the receiver. (*Trust Co.* v. *Traction Co.*, 188 Fed. 1006; *Painter* v. *Painter*, 138 Cal. 231.)

All certificate holders barred by their failure to present demands in accordance with order and notice.

D. In the present action the defendant in error seeks to recover, not upon the certificates themselves nor the benefits for which the certificates provide, but *for money had and received* upon the theory that years after the proceedings in the Federal court were terminated the insurance company repudiated the certificates by failing to pay to the holders the particular benefits for which the certificates provided. His action is one for money had and received, and he seeks to recover the money which he alleges was originally paid for the certificates; in other words, he places himself and his assignors in the position of *creditors* and seeks now to recover upon the theory of being a creditor. It requires no argument that if the rights upon and under the certificates themselves were finally and fully adjudicated and such rights finally disposed of through judicial proceedings, he could not repudiate that adjudication of the certificates and recover upon the theory, that although the certificates and rights thereunder had been adjudicated, some subsequent action of the parties in relation to such certificates could create new and additional rights and remedies. He cannot successfully avoid the effect of that adjudication by switching to a new theory and remedy. The rights of himself and his assignors, whether as creditors by reason of the

money paid for the certificates, or as holders of rights under the certificates, were all involved in and determined by the proceedings in the United States Circuit Court. Not only were he and his assignors, when viewed as creditors, present in court and bound by the decree in the *Wagstaff* case as a result of the virtual representation of all creditors, but if it be said that they were neither actually present nor represented in legal effect, still all their rights and claims as creditors or otherwise were forever foreclosed and barred by reason of the published notice of the master to all persons to present their claims within a designated time, and their consequent failure to appear and present such claims.

The record discloses that on July 24th, 1908, the court ordered the master to give a public notice requiring *"all claims and demands of whatsoever character* held by any person, company or corporation against the Great Western Life Insurance Company to be presented to the master before a designated time, or that the same would be forever barred" (R. 75). It also discloses that in pursuance of the said order the master duly published such a notice for the required length of time in the three newspapers then being published in Kansas City. The notice so published was in accordance with the court order and required the filing and presentation within the designated time of *"all claims and demands of whatsoever character* held by any person, company or corporation against the Great Western Life Insurance Company" (R. 185, 195). It is obvious that this order and notice was intended to and did apply to all claims and demands of whatsoever character which any person held against the insurance company, whether claims as creditors or otherwise. In pursuance of the notice many claims were presented and determined. If it could be said, as defendant in error here erroneously contends, that his assignors were not present in court, then it follows that their claims are forever barred and foreclosed by reason of their not appearing and presenting whatever claim or demand they had.

It is no answer to this contention and no excuse for their failure to present their demands that under the order and notice, they had until October 1st, 1908, in which to present their demands, while the decree adjudicating the rights of the certificate holders was rendered before that time had elapsed. *This because*:

1. Such decree expressly retained jurisdiction of the entire cause for all future purposes. The decree contained the follow-

ing: "That claims now or that may hereafter be asserted not hereinbefore covered are passed for the future consideration of the court" (R. 158). Also the following:

> "It is further ordered and decreed that the jurisdiction of this court is fully retained, accepted and continued from time to time until this cause is finally concluded over all subjects—matter covered by any pleading now on file or that later may be filed, ahd over all parties * * * who may come into court by any pleading. All such parties now to the record, including the said, The Great Western Life Insurance Company, and all parties who may later on be made parties herein, shall be bound by such further orders and decrees as to the court may seem necessary and proper" (R. 158).

The jurisdiction thus retained was continued until the 14th day of October, 1912 (R. 106), or for a period of more than four years after said decree was rendered, while under the notice to present claims and demands October 1st, 1908, was the final date allowed for such purpose.

2. If, as defendant in error contends, his assignors were not in court at the time the decree was rendered and was not bound thereby and had in legal effect no notice thereof, then such decree would afford no reason why they should not *thereafter* present their demands as ordered and have them determined; because the court expressly retained jurisdiction beyond the designated time for the presentation and adjudication of all claims and demands of whatsoever character that had not been determined by the decree here assailed. If they were present, either in person or through direct or virtual representation, and were dissatisfied with the relief which the decree granted, their *sole* remedy was an appeal or a direct review of any alleged error. If they were not so present and not so bound by said decree it became their imperative duty to appear and present their claims and demands for adjudication by October 1st, 1908, and if they failed, as they did, to do this, they were by the order and judgment forever barred. If they were dissatisfied with the order and judgment thus forever barring them, it was likewise their remedy and duty to seek other relief or a correction of any alleged error of such decree by an appeal or a direct review. In either event, and having failed to seek a correction of any alleged error by appeal or direct review, they are forever foreclosed and particularly are prevented from obtaining re-

lief in a collateral proceedings as here. There can be no question as to the power or jurisdiction of a court in a receivership proceedings to require claims and demands to be presented within a reasonable time and to forever bar such claims and demands as are not so presented. (*Halsted* v. *Forrect Hill Co.*, 109 Fed. 820; *Libby* v. *Norris*, 142 Mass. 246.) Such a power and jurisdiction is indispensably essential to orderly procedure and to a final determination of such receivership proceedings, and if a court did not possess such power, such proceedings could never go to a final hearing and be fairly and fully adjudicated and disposed of. Such a power is inherent and essential to the exercise of the given jurisdiction, and we assume that its existence in all such cases will not be questioned.

V.

Court Had Jurisdiction of Subject Matter.

While the decision of the state court is based upon the conclusion that the judgment of the Federal court was void because of lack of jurisdiction of the *person* and *not* of the *subject-matter*, defendant in error may contend here, as he did in the state court, that there was also an absence of jurisdiction of the subject-matter with which the judgment dealt. The error of the position heretofore assumed by him upon this question lies in the failure to observe the distinction between *jurisdiction* and the *exercise* of jurisdiction.

Jurisdiction is the power to hear and determine, the authority to act or decide a cause at all, and in no degree depends upon either the regularity of the exercise of that power or upon the correctness or rightfulness of the decision made; for the power to decide necessarily carries with it the power to decide wrongfully as well as rightfully. Having the power to act or decide a cause at all, the decision of all other questions arising in the case is but an *exercise* of that jurisdiction. The authority to act in the particular way in which the court did act, or to render the judgment that it did render, or to dispose of the rights of the parties in the manner that it did dispose of them, does not go to the point of *jurisdiction* but involves merely the *exercise* of jurisdiction. (*Collins* v. *Williams*, 229 Fed. 59; *Cooper* v. *Reynolds*, 10 Wall. 308; *Harom* v. *Dater*, 120 U. S. 464.) As said in *Collins* v. *Williams*, 229 Fed. 59, 143 C. C. A. 653, where a judicial tribunal has gen-

eral jurisdiction of the subject-matter and the specific facts which give it the rights to act in a particular case are averred, a mere *wrongful* or *defective* execution of the jurisdiction makes its acts *only* voidable which can be reversed for error only upon appeal but cannot be assailed in a collateral proceedings.

Only a correct understanding of the record itself is necessary to show the jurisdiction of the subject-matter. The bill of complaint invoking the jurisdiction of the Federal court, and its exercise thereof, was filed by various stockholders of a corporation known as The Great Western Agency Company of Colorado, in behalf of themselves and *all* persons similarly *situated*. This company directly owned all of the stock of the insurance company, except eight shares which were individually held by the directors of the insurance company. The bill alleged *diversity of citizenship*, mismanagement and insolvency of both the agency company and the insurance company, avoidance of a multiplicity of suits and *ultra vires* acts on the part of the insurance company in issuing the *annuity certificates*, including those now held by defendant in error. It prayed for the appointment of a receiver to take charge of and preserve the property and dispose of the same to the best advantage and interest, and for an adjudication and settlement of the rights of *all* persons having an interest in both the agency company and the insurance company, and for the distribution of remaining assets.

After the bill of complaint was filed and service was had, defendant in error here, as an annuity certificate holder, filed his intervening bill in behalf of himself and all others similarly situated. Specific complaint was made in the bill against the issuance of all so-called annuity certificates, and their adjudication and all rights thereunder were specifically tendered by the original bill and intervening bills. Upon assuming jurisdiction of the cause, these annuity certificates became a prominent question and issue in the proceedings and determination thereof. The assets of the insurance company, including the fund and assets to which the certificates related, were by the court ordered seized by the receiver, and the same were seized and the court ordered a sale thereof. Both a receiver and a master were appointed, and in every respect the cause proceeded in the same orderly way as do all receivership proceedings.

Defendant in error himself invoked and obtained the benefit of the court's jurisdiction of the subject-matter upon his bill of

intervention. He prayed, obtained and accepted in the *same judgment he is here assailing*, an order cancelling his own certificate upon a return to him of a note which he had given in partial payment thereof (Rec. p. 158). In the instant case and during the course of his oral testimony he testified that he regarded that part of the decree which gave *him* relief as binding, and that if he were ever sued upon his note he would invoke that part of the judgment in his defense (Rec. p. 317).

That the original bill of complaint and the various bills of intervention averred uncontroverted facts which gave the Federal court the right to act in the case must be beyond doubt. The original bill itself, specially brought to the attention and jurisdiction of the court the claims and demands of the certificate holders, and the issues which such certificates directly tendered became important issues in administering and adjudicating the affairs and assets of the corporation.

All the claims of the certificate holders were directly against the corporation and assets over which the court had and was exercising jurisdiction and whose affairs in all respects were being administered by the court. The court was bound to consider all issues presented and to render its judgment and decree thereon. It was that court's function and duty to consider and determine *all* claims of whatsoever character against the corporation and its assets, because otherwise the equity suit over which it was exercising jurisdiction could not have been fully and finally determined, and its affairs, although insolvent, could not have been fully and finally administered and disposed of in accordance with the objects of the suit. *Its jurisdiction of all claims of whatsoever character against the corporation or the assets, which of course included the claims of the certificate holders, was so complete and exclusive that had any of the certificate holders sued in another court, either for the benefits prescribed by the certificates or the money paid therefor, the United States Court could and would have restrained such other jurisdiction and had the claims so asserted in the other court transferred to it for adjudication.* (*Bank* v. *Hucheus*, 115 Fed. 96; *Peck* v. *Elliot*, 79 Fed. 10; *Knox* v. *Atwood*, 228 Fed. 753; *Bottom* v. *Bldg. Association*, 123 Fed. 744; *White* v. *Ewing*, 159 U. S. 36; *Betts* v. *Bicher*, 213 Fed. 531.)

A court of equity once in possession of the *res* and having jurisdiction of the parties, will not relinquish its hold until it has

done complete and adequate justice to *all* the parties and it has a long arm for so doing.

The defendant in error has heretofore contended that (a) the disposition made of the claims of the annuity certificate holders was unfair and did not accord them all their legal rights, and that the court had no authority to make the *particular* decision that it did with reference to their rights. He has further contended that while the court could have lawfully freed the purchaser from all claims of the certificate holders, if such purchaser had been some individual or corporation not interested in the original insurance company, yet it had no authority to free the particular purchaser in this case, because such purchaser was merely a reorganization of the original insolvent company. If both contentions were conceded, it would amount only to error or wrongful execution of jurisdiction, which could be corrected only upon direct review, but not in a collateral proceeding. The mere fact that in the administration of the assets of an insolvent corporation summary or improper proceedings are resorted to, or incorrect or unauthorized orders made, do not in themselves affect the jurisdiction of the court as having proceeded in excess of its powers. The insurance company which had issued the certificates was insolvent and doing a losing business. There were no available assets from which the certificate holders or stockholders could realize anything, and the court having jurisdiction of the case so expressly found. Under such conditions, it was a proper exercise of jurisdiction and discretion to authorize a reorganization, composed of a new set of stockholders, and order a sale of the assets and the capital stock of the disorganized and insolvent company to such of the certificate holders and other interested persons as were willing to join therein, *all* such certificate holders and other similarly interested persons being given the same opportunity to join on the same basis, and to fully and finally dispose of the rights and claims of such certificate holders and other interested parties as would not join therein. Some disposition of these matters had to be made and it was that court's function and authority to determine the *particular* disposition that would be made.

Clearly all claims arising from these certificates were before the court for determination, and such determination was absolutely essential to a complete disposition of the suit. They were before the court for whatever decision thereon it might see fit to make, subject only to a direct review upon appeal. The court had

the jurisdiction to allow or disallow them, to determine that they were or were not valid claims, and to grant whatever relief it concluded such claims were entitled to. Had it completely disallowed all such claims or found them without any merit or validity, its judgment thereon would be final, if not appealed from, even though its judgment were wrong. This would of course apply to the lesser power to find that they were of some merit but only of such merit as to entitle them to a particular relief.

The court in determining these questions determined that they were only of certain merit and of a particular character and that the only relief to which the holders were entitled was the relief that the court granted. Even had the court erred in determining the character and extent of relief to which the holders were entitled, that question is not open in a collateral proceedings.

Under the condition of the company and the situation existing at the time, a sale to such of the former stockholders and certificate holders as were willing to join a reorganization to rehabilitate the company and pay up its declared liabilities would have been warranted and sustained, even though, the same had not taken place under the direction and orders of a court having jurisdiction thereof. (*Marks* v. *Merrill Paper Co.*, 188 Fed. 850; *Hartz* v. *Brown*, 77 Ill. 226; *Leavenworth* v. *Railway Co.*, 134 U. S. 688.) In the cases just cited it was held that a sale under the conditions above stated, carrying with it a cancellation of the rights and interests of all stockholders who would not join therein, was proper, even though the same was not done under orders and decrees of a court. The only question presenting itself in such cases of reorganization outside of court is whether all of the stockholders and interested parties have been treated fairly and equally. With cases where such reorganization and sale take place under the supervision of a court having jurisdiction, the question of whether all the interested parties were treated fairly and equally is not open to review, except upon an appeal. The present reorganization, sale and cancellation of the rights of those who would not join therein occurred under the diretct supervision and in accordance with the order and decree of a court having jurisdiction of the entire subject matter. That court by its action and judgment expressly found and declared that the plan of reorganization and sale upon the terms stated in the decree were fair and accorded to all the interested parties, including the certificate holders, the same and equal rights, and this finding is conclusive in all col-

lateral proceedings. (*Flannigan* v. *Land Co.*, 144 Fed. 371; *Toy* v. *Hopkins*, 212 U. S. 542; *Manson* v. *Duncanson*, 166 U. S. 533, 548.) Not only has it been judicially and finally determined that such plan and sale were fair and accorded all interested persons equal and just rights, but the record otherwise affirmatively discloses that in point of fact, even if this question were an open one, the same was fair and equitable. At the time the decree was rendered and the rights of the parties adjudicated the insurance company in which the certificate holders were interested and against which they were asserting their claims was thoroughly insolvent. Its business and assets were offered at public sale and the best and highest bid would not furnish sufficient money to pay the debts of the company, even after excluding from its liabilities all claims of all the certificate holders. This fact was expressly found by the United States Circuit Court (Rec. p. 165), and likewise found by the Missouri Supreme Court (R. 358) in its decision upon the instant case, and the record otherwise affirmatively discloses it. The figures show that creditors, exclusive of certificate holders, would have received about thirty cents on the dollar.

Eighty-five per cent of the annuity certificate holders and certain stockholders, as well as Judge McPherson, felt that if the company were reorganized with a new set of stockholders who would pay in a sufficient amount to pay the declared debts and liabilities, such certificate holders as would join therein might possibly thereafter realize something for the money that they had invested, but if such plan was not adopted neither the stockholders or annuity certificate holders would receive a penny and that even the other debts could not be paid in full. The court thereupon ascertained and determined what in its judgment was a fair and the best plan of reorganization and sale and the plan adopted by it accorded individually to the stockholders of the agency company and to each and every certificate holder identically the same right, privilege and protection. Under the decree such stockholders as desired to join in the reorganization and purchase of the assets and stock were given the privilege to buy and receive stock in the new company of a par value equal to one-half of the amount of new money which they put in, *and identically the same provision was made with reference to all certificate holders.* Each and every certificate holder was placed upon the same basis with all other persons joining in the reorganization and purchase, and were entitled to receive stock in the new company of a par value equal

to one-half of the amount of new money which they might put in. As a means of saving from the wreckage as much as possible, eighty-five per cent of the certificate holders joined therein and upon the terms stated; while defendant's assignors refused to join and refused to pay in a single dollar towards the rehabilitation and reorganization of the company and wrongfully attempt now to obtain even a greater net amount than those who rehabilitated and remade the company and who by their efforts created assets which did not exist at the time the rights of his assignors required action.

The defendant in error contends, however, that the court acted in excess of its jurisdiction by reason of selling the stock and assets of the insurance company to the reorganized company *instead* of selling it to some other *particular* purchaser, and in this connection he says that it was the same corporation which came out of court that had gone into court. If the court had jurisdiction to sell the stock and assets free of claims and liabilities to a purchaser other than the reorganized company, its sale to the reorganized company instead of to another purchaser would clearly be only error or if it were error, a decision in the *exercise* of jurisdiction, a mere matter of procedure, and would not reach the question of *jurisdiction* itself. If it were true, as he contends, that the reorganized company which purchased and received the stock and assets, were the same company that had gone into court and been adjudged insolvent, and if in point of law this created a technical difference, courts of equity, looking through forms to the substance of things, would ignore the legal fiction of distinct corporate existence when it seemed necessary, as here, to do justice and preserve the rights of innocent parties or to circumvent fraud (*Re Rieger*, 167 Fed. 609, 613; *Trust Co. v. Carpenter*, 250 Fed. 668, 672, 677.)

In point of substance, however, the reorganized company which purchased and received the stock and assets under the order of the court was not the same company that had gone into court and been adjudged insolvent. The stockholders of the insolvent insurance company which went into court consisted of the Great Western Agency Company, which owned all of its shares except eight, and these eight were nominally held by individuals who acted as directors of the insurance company. The persons joining in the reorganized company and who became stockholders thereof were the individual stockholders of the Great Western Agency Company, acting in their individual capacity, and eighty-five per

cent of the five hundred annuity certificate holders. These new stockholders of the reorganized company individually paid in for their stock a large sum of money to which the old company had no claim whatever. The company which went into court had no capital or other assets in excess of its debts to creditors while the reorganized company was created with an unimpaired capital and had no debts or liabilities except policy liabilities to policy holders on the business which it acquired at the sale. Under the direction of the court an entirely new set of directors was elected for the reorganized company, and it in all respects was treated by the court as an entity separate and distinct from that of the old company. It will also be observed that the stock of the insurance company was sold directly at the private sale to James Chappell, trustee for the persons joining in the reorganization. (R. 156) The old company was at the time but an empty shell, while the reorganized company instantly became an active, solvent concern. While it is true the reorganized company used the name and corporate franchise of the old company, yet in point of fact the sale of the assets and property was *in reality* made to *individuals* who contributed their money to pay the debts of the old company and who by reason of such contribution and payments subsequently became stockholders of the reorganized company under an order of the court. These persons, in contributing this money and making these payments, did so purely in their individual capacity and as entities entirely separate and distinct from the old company. The various proceedings, orders and judgments clearly disclose this to have been the actual situation.

VI.

Defendant in Error and His Assignors Estopped.

Both defendant in error and his assignors should be held to be *estopped* to deny the effect upon them of the decree in the *Wagstaff* case. As to the defendant in error himself, he was personally present and filed his own bill of intervention in behalf of himself and other certificate holders similarly situated. He prayed for and obtained for himself and other certificate holders similarly situated specific relief upon his and their certificates. He personally knew that eighty-five per cent of the annuity certificate holders, situated similarly as the ones from whom he later acquired the certificates here involved, had in good faith put their money

into a reorganized company to rehabilitate the insolvent insurance company. In his bill of intervention he swore that the insurance company was not authorized by its charter to issue the so-called annuity certificates and had no power or authority whatever for so doing. He knew that the terms of the decree undertook to bind and thereafter foreclose any and all rights, claims and demands of the holders whose certificates he acquired. He knew that the claims and interests of *all* the certificate holders had been fully and fairly presented to, considered by and passed upon by the court, and that neither he nor his assignors had made any objection to the proceedings or to the plan that had been adopted, and that none had seen fit to appeal from the decree. He knew that a committee of the stockholders and their attorneys had appeared for the certificate holders as a *class*, and that their rights as a *class* had been considered and determined. He also knew that the plan adopted by the court had been formulated and presented by a large majority of the certificate holders, and he took assignments from his assignors without regard to whether they were actually present or not and without regard to whether they had joined in the reorganization. This is apparent from the fact that he sued upon a large number of certificates upon which he later dismissed because the record showed that they had actually joined in the reorganization and had accepted stock therein in lieu of their certificates. It is apparent from the entire record that his purpose and plan in acquiring the certificates of his assignors were purely speculative, and that *only* he would profit through a recovery.

Having acquired the certificates under such conditions, he should in equity be estopped from asserting any claims thereon as against this plaintiff in error, which acquired the assets of the reorganized company years after the decree was rendered and after for years no claims thereon had been made by the holders. Plaintiff in error as the purchaser from the reorganized company was justified in presuming from the records of the United States Circuit Court that it had jurisdiction of the parties and the subject matter, because there is not only nothing to the contrary, but because such jurisdiction affirmatively appears from such records. His assignors themselves should likewise be estopped, even if they are here asserting claims, because full information as to the proceedings and the proposed plan of reorganization was given them by letters and circulars mailed to their last known address, and which under the law they are presumed to have received.

The doctrine of estoppel should be applied to the defendant in error and his assignors. *Sheets* v. *Ramer* (Minn.), 145 N. W. 787, 788; *Cronin* v. *Woolf*, 164 N. W. 1018, 1019; *Johnson* v. *Gillette*, 168 Pac. 1031, 1033; *Jackson* v. *Industrial Power*, 117 N. E. 705, 707 (paragraphs 6, 7); *Kent* v. *Mining Co.*, 78 N. Y. 156; *Halsted* v. *Forest Hill Co.*, 109 Fed. 820; *Scoffins* v. *Grandstaff*, 12 Kan. 467.

Conclusion.

Plaintiff in error, therefore, respectfully submits that the judgment against it rendered by the Circuit Court of Jackson County, Missouri, should be set aside and that the decision and judgment of the Supreme Court of Missouri should be reversed.

Respectfully submitted,

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No. 295.

IN THE

Supreme Court of the United States

INTERNATIONAL LIFE INSURANCE COMPANY, PETITIONER AND PLAINTIFF IN ERROR,

VS.

ADRIAN F. SHERMAN, RESPONDENT AND DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

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U. S. Consolidated Seeded Raisin Co. vs. Chaddock & Co., 173 Fed. (C. C. A. 9th Circuit), 577 l. c. 579 . . . . . 7, 59

Utley vs. Donaldson, 94 U. S. 29, 24 Law Ed. 54 . . 4, 40

U. S. vs. Meyer, 170 Fed. 983, l. c. 984 6

Windsor vs. McVeigh, 93 U. S. 274, 23 Law Ed. 914 . . . . . 4, 49, 54

Washington Packet Co. vs. Sickles, 65 U. S. 24, 16 Law Ed. 650.....4, 28
Woodland Co. vs. Mendenhall et al., 82 Minn. 483, 85 N. W. 164 6
2 R. C. L. 633, 634, Sec. 43..... 6
2 Amer. & Engl. Enc. of Law, 1079-1084..... 6
4th Cyc. 69..... 6
4th Cyc. 20 6
6 R. C. L. page 925, Sec. 310..... 6

No. 295.

IN THE

Supreme Court of the United States

INTERNATIONAL LIFE INSURANCE COMPANY, PETITIONER AND PLAINTIFF IN ERROR,

VS.

ADRIAN F. SHERMAN, RESPONDENT AND DEFENDANT IN ERROR.

STATEMENT.

I.

Heretofore respondent filed motion to dismiss writ of error and petition for certiorari in this case. We believe that our motions should be sustained for the reasons assigned in our suggestions in support thereof. However, we will not treat of them here, and will rest the case so far as that is concerned on the motions as filed.

As additional grounds for dismissing writ of error and denying petition for certiorari, we desire to call the court's particular attention to Point No. 4 of our points and authorities wherein we take the position that plaintiff in error is not entitled to review by this court, because

by its solemn agreement (Tr. Rec. 131) it is stipulated that the judgment of the Supreme Court of Missouri on the merits of this controversy should be a final determination thereof.

Since counsel for plaintiff in error does not contradict the statement of facts contained in the opinion of the Supreme Court of Missouri in this case, we will not attempt an independent statement of facts, but refer the court to the opinion as containing a very clear and concise statement of the facts involved in this case. While not desiring to speak disparagingly of the efforts of learned counsel for plaintiff in error to supply a proper statement of the facts in this case, we believe a reading of the statement of facts by Justice Ragland, the author of the opinion rendered by the Supreme Court of Missouri, cannot be improved on or equaled. This opinion will be found set out in full beginning at page 356 of the transcript of this record.

So much of the facts as are relevant to the propositions of law involved herein we will discuss in our argument.

POINTS AND AUTHORITIES.

I.

The decree of the U. S. Circuit Court in the Wagstaff case made August 27, 1908 and which is invoked by defendant Insurance Company, (Tr. Rec. 152, 155), was null and void so far as the parties mentioned in the petition in this case are concerned, for the following reasons:

(1) The court did not have jurisdiction of the parties.

(2) The court had no jurisdiction of the subject matter.

(3) The decree as rendered transcends the authority of the court in such cases.

(4) The decree was in violence of the Fifth Amendment to the Constitution of the United States, which prohibits the taking of property without due process of law.

(5) The parties in interest in this case never assented to the making of the agreement with the so-called "organization committee."

(6) The court had no power or authority to compel the parties to cancel their contract as represented by the certificates, and to assent to and enter into another and a different contract.

(7) The decree as rendered was in no way justi-

fied by the pleadings in the case, and therefore was absolutely null and void.

Sec. 737, R. S. U. S.
Dec. 1101, 36 Stat. at Large.
5th Fed. Stat. Ann. 2nd Ed. 482.
U. S. Sup. Ct. Equity Rules 47, 48.
Windsor v. *McVeigh*, 93 U. S. 274, 23 Law Ed. 914.
Shields v. *Barrow*, 58 U. S. 130, 15 Law Ed. 158.
Minn. v. *Northern Securities Co.*, 184 U. S. 199, 46 Law Ed. 499, l. c. 515, 516.
Reynolds v. *Stockton*, 140 U. S. 254, 35 Law Ed. 464.
Washington Packet Co. v. *Sickles*, 65 U. S. 24, 16 Law Ed. 650.
Texas & Pacific Ry. Co. v. *Johnson*, 151 U. S. 81, 38 Law Ed. 81.
Hovey v. *Elliott*, 167 U. S. 407, 42 Law Ed. 215.
Cook on Corporations, 6th Ed. v. 3, page 3180.
Jackson Co. v. *Gardner Inv. Co.*, 200 Fed. 113.
Ervin v. *Oregon R. R.*, 27 Fed. 625.
Utley v. *Donaldson*, 94 U. S. 29, 24 Law Ed. 54.
Hollister v. *Stewart*, 111 N. Y. 644.
Canada Sou. R. R. Co. v. *Gebhardt*, 109 U. S. 527, 27 Law Ed. 1020.
Gilfillan v. *Union Canal Co.*, Pa. 109 U. S. 401, 27 Law Ed. 977.
Boozer v. *Huston*, 30 Gratt 276, 32 Am. Rep. 679.
New Orleans Water Works Co. v. *New Orleans*, 164 U. S. 480, 41 Law Ed. 523, 17 Sup. Ct. 165.
Clark v. *Arizona Mutual Savings & Loan Assn.*, 217 Fed. 642.

Hassall v. *Wilcox*, 130 U. S. 504, 32 Law Ed. 1005, 9 Sup. Ct. 593.

Pensacola State Bank v. *Thornberry*, 226 Fed. 618, 141 C. C. A. 367.

Lewis v. *Peck*, 154 Fed. 278, 85 C. C. A. 211.

McLaren v. *International Real Estate Co.*, 126 Mo. App. 260.

Troll v. *City of St. Louis*, 257 Mo. 721.

Farmers v. *Bank of Ariz., Mutual Assn.*, 220 Fed. 6, 135 C. C. A. 577.

Sache v. *Gillette*, 101 Minn. 175, 118 Am. St. Rep. 612, 11 Ann. Cas. 348, 11 L. R. A. (U. S.) 803, 112 N. W. 389, 390.

II.

It affirmatively appears from the record that none of the annuity certificate holders who assigned and transferred their certificates to respondent Sherman were parties in the Wagstaff case, nor did they make voluntary appearance, nor did they appear by counsel. Not being actually or constructively before the court, the order of Judge McPherson of August 27th, 1908 (Tr. R. 155) so far as it affected these annuity certificate holders was a nullity. Furthermore, the order went beyond the pleadings and the relief prayed for, and in this respect the order of the court was coram non judice and void.

"Judgments," 15 R. C. L. Sec. 328, p. 854.

Pennoyer v. *Neff*, 95 U. S. 565, 24 Law Ed. 565.

State of California v. *Sou. Pac. R. Co.*, 157 U. S. 229, l. c. 251, 39 L. Ed. 683, l. c. 691.

New River Mineral Co. v. *Seeley*, 120 Fed. 193, l. c. 196.

Taft Co. v. *Century Savings Bank*, 141 Fed. 369, l. c. 371.

Louisville-Nashville Ry. v. *Schmidt*, 177 U. S. 230, 236, 44 Law Ed. 747.

Simon v. *Kraft*, 182 U. S. 427, 436, 45 La. Ed. 1165.
Grannis v. *Ordean*, 234 U. S. 383, 394, 58 Law Ed. 1363, l. c. 1369.
Lewis v. *Peck*, 154 Fed. (C. C. A.) 273 l. c. 278, 280.
U. S. v. *Meyer*, 170 Fed. 983, l. c. 984.
Baker v. *Baker, Eccles & Co.*, 242 U. S. 394, l. c. 403, 61 Law Ed. 393.
"Judgments and Decrees," Vol. 7 Enc. U. S. Sup. Ct. Rep. p. 626.
Simpkins "Fed. Equity Suit" (2nd Ed.) pp. 229, 235.

III.

The plaintiff as assignee of the annuity certificates, became vested with all the rights and remedies possessed by the assignors, and such as accrued after such assignment.

Carroll v. *Wright*, 131 Ga. 728, 63 S. E. 260, 267.
Sec. 8057, R. S. of Missouri, 1909.
6 R. C. L. page 925, Sec. 310.
2 R. C. L. 633, 634, Sec. 43.
2 Amer. & Engl. Enc. of Law, 1079-1084.
Schlieman v. *Bolen, Sup. Ct. of Minn.* 30 N. W. 879.
Oneida Bank v. *Ontario Bank*, 21 N. Y. Rep. 490.
Reeder Bros. Shoe Co. v. *Prylinski*, Mich. 60 N. W. 969.
4th Cyc. 69.
4th Cyc. 20.
Woodland Co. v. *Mendenhall et al.*, 82 Minn. 483, 85 N. W. 164.
Henson v. *Smith*, 138 Cal. 216, 71 Pac. 180.
Ramsey v. *Johnson*, 8 Wyo. 58, 80 Amer. St. Rep. 948.

Dickson v. *Merchants Elev. Co.*, 44 Mo. App. 498.

Berry v. *Chase et al.*, 179 Fed. 426, l. c. 431.

Commonwealth Steamship Co. v. *American Ship Building Co.*, 197 Fed. 780-796.

In re Levin, 173 Fed. 190, 120.

IV.

Plaintiff in error solemnly agreed with the State of Missouri and all parties concerned (Art. 111 Merger Contract, Tr. Rec. 130) that one suit might be brought to test the claims of annuity certificate holders, which would give the Supreme Court of Missouri jurisdiction, and it was provided that if the Supreme Court of Missouri should hold the annuity certificates valid and subsisting contracts or obligations of plaintiff in error, then plaintiff in error would abide by that decision. This was a waiver of the right of plaintiff in error to proceed further, and therefore, plaintiff in error is estopped to appeal to this court for review.

U. S. Consolidated Seeded Raisin Co. v. *Chaddock & Co.*, 173 Fed. (C. C. A. 9th Circuit), 577 l. c. 579.

Appeal in Error, 3 Corpus Juris p. 661.

ARGUMENT.

I.

Alleged Federal Question.

We join with counsel for plaintiff in error in the statement that the dominant question involved in this case is whether or not the United States Circuit Court had jurisdiction over the subject matters and the parties in the equitable proceedings entitled *J. M. Wagstaff et al. v. Great Western Agency Company, Great Western Life Insurance Company et al.*, in equity 3367. Assuming that there is such a question in the case, and that it was properly presented below and is now properly before this court, we say that it is the *only* question in this case. Other questions were raised in the State Supreme Court but they were purely questions for the state tribunal. Since those questions are not involved here we will not refer to them further. The facts being practically undisputed, there remains only this one question of law to be considered. If a federal question is involved and the order of Judge McPherson made in the equity case above referred to was a valid one, this cause ought to be reversed. If, however, this order or decree was rendered by a court without jurisdiction of the subject matter or the parties and went beyond the pleadings and the relief prayed for, such an order was an utter nullity, as the Su-

preme Court of Missouri found, then this judgment should be affirmed.

Briefly we will present our views on this one and determining point in this lawsuit.

II.

What is the legal status of these annuity certificates?

It is a little difficult to legally denominate these certificates. The annuity certificate holders had no voice whatever in the management or control of the Great Western Life Insurance Company which issued the certificates. They were, therefore, not stockholders, and they were not bondholders in the strict sense of the term. Mr. Cooper, counsel for plaintiff in error, in the trial court in answer to a query from the court as to his theory about the status of these annuity certificates said (Tr. Rec. 108):

> "The Court: Anyway you are treating them in the nature of bonds and notes, payable annually.
>
> Mr. Cooper: Of course, Your Honor, this is a suit to recover back the purchase money. This is not a suit on the contract; this is a suit to recover back the moneys paid in.
>
> The Court: I understand. But, as affected by this order of the court requiring them to present their claims within a certain time, you are treating them as a bond or note payable in installments?
>
> Mr. Cooper: Yes, sir."

In any event they were continuing contracts and obligated the Great Western Life Insurance Company to pay each year either out of these

premiums received or net proceeds, an annuity, or dividend, to be computed by the insurance company. The contract continued during the life of the holder and passed to his heirs or assigns. The issuance of these certificates was a device conjured up by the promoters of this insurance company to raise money quickly because they offered attractive investment features, and were undoubtedly issued to avoid the insurance laws of Missouri which provide in substance, that an insurance company must keep on deposit with the Superintendent of Insurance securities of approved value equal to the amount of the policies issued. Under this scheme of raising money the insurance company avoided the law. As has been seen, these annuity certificates were all issued in the fall of 1907. Certificates sold readily and $330,000.00 worth were purchased by the investing public of the Southwest. The certificates themselves state that they were issued and sold in order to provide funds for the insurance company so that it could immediately write a large volume of insurance. The record shows that during the first year something like twenty-four million dollars in insurance was written (Tr. Rec. 334, 342).

This insurance company was of the "high finance" variety. The money realized from the sale of the annuity certificates furnished the life blood of the company. Notwithstanding this large amount of money raised and the business done by the company, in the spring of 1908—six or eight months after the issuance of these certificates—suit was filed in the Federal Court

by certain dissatisfied stock holders of the Great Western Agency and the Great Western Life Insurance Company against the Great Western Agency and the Great Western Life Insurance Company and certain promoters of these companies.

Annuity certificate holders were not original parties named in the suit as filed in the Federal Court nor made parties subsequent thereto.

The petition in the case of *Wagstaff v. Great Western Life Insurance Co. et al.*, is set forth in full in the transcript of record before this court at page 170. Reference to this petition will show that these annuity certificate holders were in nowise parties to that proceeding. All persons who filed intervening petitions after the institution of suit are set out on page 196 of transcript of record.

None of these annuity certificate holders filing these intervening petitions are included in the list represented by defendant in error.

III.

The decree of the United States Circuit Court in the Wagstaff case made August 27, 1908, was null and void so far as the parties mentioned in the petition in this case are concerned, and for the following reasons:

(1) The court did not have jurisdiction of the parties.

(2) The court had no jurisdiction of the subject matter.

(3) The decree as rendered transcends the authority of the court in such cases.

(4) The decree was in violation of the Fifth Amendment to the Constitution of the United States, which prohibits the taking of property without the due process of law.

(5) The parties in interest in this case never assented to the making of the agreement with the so-called organization committee.

(6) The court had no power or authority to compel the parties to cancel their contract as represented by the certificates and to assent to and enter into another and a different contract.

(7) The decree as rendered was in no way justified by the pleadings in the case, and therefore, was absolutely null and void.

The fourth point made by the plaintiff in error, is that the annuity certificate holders (including Sherman's), as assignors, were in court and bound by the decree in the Wagstaff case, first, as a matter of actual representation; and second, because of community fund, and third, by class representation (IV Points and Authorities, p. 34, and page 51 Plaintiff in Error's Brief).

It is alleged in such answer that the court had jurisdiction of the subject matter, and of the parties thereto (including plaintiff), and the holders and owners of the certificates and that an order was made by the court in said cause directing a sale by its receivers of the property and assets of the company, and thereupon, and in

pursuance of the decree, certain of the stockholders and holders of annuity and investment certificates effected a reorganization and the court, by its decree, compelled or ordered such holders to come in, surrender their certificates for cancellation, pay in $37.50 for each $150.00 certificate held by them, and accept for the $37.50, $18.75 worth of stock of the Great Western Life Insurance Company.

Whether this decree is in any way binding upon the parties in interest here requires somewhat of an examination of the case in the Federal Court known as the "Wagstaff case," and also a consideration of these annuity certificates.

This Wagstaff case was instituted May 11, 1908. The complainants in that case described themselves as stockholders of the Great Western Agency Company, and it is stated in the petition that they, the complainants, instituted the suit in their own behalf and in behalf of all persons similarly situated who might desire to participate in the litigation, and to contribute their just proportion of the expenses of the proceeding.

The defendants were the Great Western Agency Company, the Great Western Life Insurance Company, O. L. Van Laningham, Julia V. Van Laningham, E. L. Biersmith, Paquin, Smith and Kendall, it being alleged that these individuals (except Mrs. Van Laningham) claimed to be the owners of one share each of the stock of the Great Western Agency Company for which they had paid nothing, and that such parties other than Mrs. Van Laningham were the officers and directors of the

agency company (Tr. Rec. 176). And further, that the parties mentioned had caused to be issued to them 991 shares of the stock of the Great Western Life Insurance Company, and that such parties had dissipated the assets and properties of the two corporations, and has issued annuity and investment certificates in a large amount and which was unauthorized by the charter of the insurance company or the laws of Missouri, and they prayed the appointment of a receiver to take charge of the property and assets of the two companies, and conserve the same for the benefit of the plaintiff and others similarly situated.

No annuity certificate holder appeared either as a complainant or a defendant.

This pleading resulted in the appointment on May 16, 1908, of C. S. Jobes as receiver of the Great Western Agency Company and the Great Western Life Insurance Company, and in an order of the court to the receiver, to advertise and sell the property, business and assets of the insurance company.

The receiver did advertise for bids. Bids were received. One bid, that of the Kansas City Life, accepted, and the receiver reported to the court what he had done in pursuance of its orders, and then it was that objections to the decree were filed by various stockholders of the Agency Company and various annuity certificate holders, not including those in interest in this case.

The court appointed a Master in Chancery, with the usual power to hear and determine claims of creditors; the

Master gave notice that claims against the insurance company should be presented to him at his office for hearing on or before October 1, 1907, or the same would be forever barred, and this notice was published in the Kansas City papers (Tr. Rec. 185).

After bids were received and objections filed, certain of the agency stockholders and annuity certificate holders arranged a plan and one that they called a re-organization plan, by which the holders of stock in the Agency Company and holders of annuity certificates might be permitted to purchase stock of the insurance company at two for one, and when this matter was presented to Judge McPherson, he made the order and decree which, it is contended by appellant, was the bludgeon which forever put the holders of annuity certificates out of business unless they accepted the scheme and plan of the re-organization committee.

And it is significant that in this decree made on the 27th day of August, 1907, which was more than a month prior to the time given by the notice of the master within which to file claims, the court decreed that within two days from the receipt from the receivers of the moneys, properties and assets of the life insurance company (meaning the Great Western Life Insurance Company), such company should make and file with the clerk of the court, a bond properly conditioned, with surety to be approved by the clerk, for the use and benefit of the receiver, in the penal sum of $5,000.00 for the payment of such claims as against said company which may be presented and approved, "*but not to cover any*

death claims, nor in any way connected with annuity certificates" (Tr. Rec. 155).

And then follows the privilege given annuity certificate holders of surrendering them for cancellation, putting up $37.50 and taking $18.75 of the stock of the Great Western Life Insurance Company.

Up to the 27th day of August, 1908, this proceeding in the federal court was similar to all other receivership cases, contemplating a sale of the assets and property of the insurance company and a distribution of the proceeds from such sale to the creditors of such company whose claims might be presented and determined and allowed by the master in chancery.

The notice of the master in chancery provided that claims should be presented by the 1st of October, 1908. The order of Judge McPherson, of August 27, 1908, attempted to bar annuity certificate holders unless they accepted the plan and scheme of the reorganization committee, and further, compelled the insurance company to put up a bond conditioned for the payment of such claims as might be presented, *excluding, however, policy holders and annuity certificate holders.*

The only notice that was ever given to creditors, and contemplated by law, was the notice published by the master in chancery.

Copies of the decree after it was made, and copies of the paper called "Fair Play" were mailed out by the reorganization committee, supposedly to all holders of annuity certificates and stockholders of the Agency Company. A proceeding such as in the Wagstaff case

contemplated the winding up of the affairs of the corporation, and the decree to be expected in such cases was one for the sale of assets and the distribution of the proceeds therefrom, after the payment of costs, first to the holders of claims which had been allowed and then to stockholders.

But in this case, the affairs of the company were not wound up. The assets and property were never sold, and the company came out as it went in, The Great Western Life Insurance Company, and the only change that had been made was that the old directors were ousted, and a new set of directors installed.

The annuity certificate holders in interest here had no voice or control as to this reorganization scheme. They were not parties to the suit, nor made parties to the suit, nor brought in in any way, shape or form.

The part of the order of Judge McPherson of August 27th, 1908, so frequently referred to in the briefs of both parties reads as follows (Tr. p. 152):

> "Whereas it has further been the plan of the said reorganization of the said Life Insurance Company to permit holders of so-called annuity certificates heretofore issued by the said Life Insurance Company, upon the payment of the sum of $37.50 upon each share of such certificates and upon the surrender and cancellation of such certificates to receive of the capital stock of the said Life Insurance Company stock of the said company of the par value equal to one-half of the amount of such payment.
>
> Certain certificate holders have already agreed to this, aggregating more than one-half thereof, and all such annuity certificate holders who have

not so done are hereby given the privilege of so doing *for twenty days from date hereof, to avail himself of such privilege, and any such annuity certificate holder failing to so avail himself within such period of time of 20 days from this date shall no longer have such privilege or right, and such annuity and certificate holders shall thereafter be barred and estopped from making any claim of any kind whatsoever against said Life Insurance Company or officers or stockholders thereof, or against any assets of said company, and such annuity certificates will then and thereby be fully canceled in law and in equity, and such annuity certificate holders will have no further rights, claims, or demands against said company, its officers, stockholders, assets or property on account thereof."*

Nothing is more settled and clear than that none of the annuity certificateholders whose claims were assigned to plaintiff in this case were parties to this proceeding which resulted in this order. The appointment of the master to receive and file claims of creditors, etc., was made long before this order, and was made in the regular course of the receivership case when it was contemplated that a sale would be had of these assets and the company wound up. *There was never any sale, or anything tantamount to a sale of the assets of this company* (Tr. Rec. 152-163). Just what the court intended to do could not be better described than by setting out the language of Judge McPherson as to the proposition of permitting this company to be reorganized. He said (Tr. Rec. 163):

"August 15th, 1908, the matter coming on for hearing, the Kansas City Life Insurance Com-

pany asking for a confirmation of its bid, and the Philadelphia Life Insurance Company insisting that it was the better bidder, a committee of stockholders of the defendant, The Great Western Life Insurance Company, appeared and asked that neither bid be confirmed, that both bids be set aside, and that the old stockholders be allowed to pay the debts and reorganize the company, putting it upon a sound basis. *I entertained the views then, and still adhere to them, conceded to by all fairly disposed men, that a debtor at any and all times until an absolute sale has taken place shall be allowed to remain the owner of his and its property, after the payment of his or its debts, and, therefore, I announced on the 15th of August that if the reorganization committee, representing the stockholders, would put all promises to one side and not come before the court with obligations, but would appear with the actual cash, that the reorganization of the company would be allowed.*" (Italics ours.)

The money was raised to meet the pressing obligations of the company, and all the property was turned over to the company under the order of August 27th, 1908 (Tr. Rec. 152), and the receiver was directed to make a complete inventory of all the "properties, monies, credits, books and effects of evry kind and nature now in his possession or under his control" etc., and upon a compliance with the court's requirement of the amount of money to be raised and paid out, that all of this should be turned over to the reorganized company, which was done. The court merely retained jurisdiction in the case for the manifest purpose of making any further orders which might be necessary to effectuate and carry

into effect the principal order of August 27th, 1908, to turn the company back to its owners. The receiver was discharged and there was nothing left before the court when the company was turned back in its entirety to its officers. These non-present and non-consenting certificate holders were given 20 days to accept the so-called re-organization plan, or their claims of every kind and character were to be absolutely wiped out. The general creditors were given to October 1st, 1908, in which to file their claims. 20 days from August 27th would make the last day on which a certificate holder could present his claim September 16th. If a certificate holder should have appeared after September 16th, how could his claim have been filed and allowed under this decree? As a matter of fact, the record in this case shows that after this company was turned back to its officers under the order of August 27th, 1908, that not a single act touching or affecting this case was done by the Federal Court. The case merely stood on the docket until sometime in 1912 when it was finally dismissed as happens many times in cases involving similar situations. *As we have pointed out hereinbefore in our brief there was nothing due on any of these annuity certificates until January 31st, 1909.* The 8% guaranteed in the certificates had been paid for the year previous. The company owed the certificate holders nothing in 1908. The contracts had been performed by both parties, and there was not an actual breach of the contract in any respect until the company failed to pay on the 31st day of January, 1909. *But, moreover and above all, the*

interlocutory order with reference to the filing of claims on or before October 1st, 1908, was with reference to a foreclosure and saleof the assets of the company, which admittedly did not take place in this case.

Judge James W. Orr, a witness for plaintiff in error, and a member of the firm of Waggoner, Orr & Challis, represented certain interests opposed to the sale of assets of the Company, testified as follows as to the proposition of there never being any sale of the assets of this Company (Tr. Rec. 329):

> "Q. *And there never was a sale of the assets of the company?*
> A. *Not confirmed, no, sir. There was a sale to the Kansas City Life Insurance Company, if I am not mistaken, but the sale was not confirmed, as I recall it.*
> Q. *The assets, then, of the Insurance Company never went to any other corporation by decree of court, or otherwise, that you know of?*
> A. *No, sir, I think they did not. I think they were permitted to pay the debts of the concern and take over its property and take over its insurance, that that hadn't lapsed, and whatever the company had the reorganized company took.*"

The same witness further testified, referring to these annuity certificate holders, that they were all informed *not by summons or subpoena*, but they were informed as to what was going on, etc., (Tr. Rec. 328).

The order of Judge McPherson of August 27th, 1908, merely accepted the proposal of the so-called reorganization committee. Money was raised to pay certain obligations which had caused the company to be put

in the hands of a receiver. This being done the necessity of master and receiver of the assets of the company ceased. The receiver was paid and discharged and Mr. W. T. Kemper, trustee of the $130,000.00 fund raised, was instructed to pay off all these allowances and other claims set out in the decree at once (death claims and claims of annuity certificate holders being specifically excepted), and Judge McPherson himself stated that "an once" meant within five days from the date of the order (Tr. Rec. 157). Is it not idle to talk about persons filing claims with the master in a receivership case when all the assets of the company in the hands of a receiver have been taken away and the receiver discharged? Of course, this order of August 27th, 1908, turning back the company to its officers and the paying and discharging of its receiver, his solicitors and other costs, practically terminated this case, and it would be absurd to expect the annuity holders, or any claimant of any kind whatsoever, to file a claim before a master who, if not actually, had been practically discharged.

Plaintiff in error in its brief (p. 50) says that it *affirmatively* appears that the annuity certificate holders were represented by E. A. Berry, James W. Orr, B. P. Waggoner and A. F. Sherman. We emphatically but respectfully deny that the record makes any such showing. The record shows that Mr. Waggoner was associated in the practice of law with Mr. Orr; that their first appearance in this case was *after* a receiver had been appointed. As to the persons Mr. Orr and Mr.

Waggoner represented, the following question and answer explains (Tr. Rec. 322):

> "Q. Now, who were those people? A. I don't mean the individuals, but what was the connection they had with the Great Western Life Insurance Company? What was their interest in it?
> A. Well, my recollection is that they were Great Western Agency stockholders, principally, and some of them were Great Western Life Insurance Company stockholders and some were annuity certificate holders."

Mr. Sherman represented himself and *two* other certificate holders, a Mr. Schooley and another whose name he could not recall (Tr. Rec. 316). Who Mr. Berry represented is not disclosed by the record, but no intervening petition appears to have been filed by him.

The order of Judge McPherson shows that at the time he made the order, about one-half of the annuity certificate holders had appeared and the others had not appeared and they were given 20 days in which to come in and enter into a new contract and assume new obligations, or suffer the consequence of having their life savings invested in these certificates utterly wiped out. We assert with all the emphasis at our command that the record affirmatively shows that none of these certificate holders, which by stipulation between the parties it was agreed that Mr. Sherman was the owner and holder of their certificates, appeared in any way in these proceedings. They were *indispensable* parties to this proceeding if any such order as made is to be justified.

IV.

The annuity certificate holders being indispensable parties, no room exists for the application of the rule of "class" or "virtual" representation. Newspaper notoriety, mailing of propaganda called "Fairplay," informal gatherings of certain of the annuity certificate holders, is not sufficient to give a court jurisdiction over parties, and will not support a judgment which wipes out contractural obligations and compels the assumption of new ones.

This suit was instituted, as said, in 1908, and at that time, Sec. 737 of the Revised Stat., Sec. 1101, 36th Stat. L., Sec. 50, 5th Fed. Stat. Ann. 2nd Ed. 482, was in full force and effect. Such statute reads as follows:

> "Sec. 50. (When a part of several defendants cannot be served.) When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and nonjoinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit."

Equity rules prepared by the United States Supreme Court were in effect, and particularly rules 47 and 48, which are as follows:

"Sec. 47. In all cases where it shall appear to the court that persons who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in their discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties."

"48. Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be brought before it, the court in its discretion may dispense with making all of them parties, and may proseed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties."

Under the above statute and these rules, decrees may be made in cases where the parties were numerous, and some not before the court, but the decree should be without prejudice to the rights and claims of all the absent parties.

Now, the above rules were amended in 1912, effective Feb. 1, 1913, a new rule 38 supplanted rule 48 above quoted.

Even assuming that the decree of Judge McPherson was such a decree as he could legally make in such a proceeding, under the above statute and rules of the

court it was absolutely of no effect and void so far as the absent parties were concerned.

It will not be denied that where one relies upon a decree or judgment of another court, he must show that that court had jurisdiction of the subject-matter and of the parties thereto.

In the case of *Shields* v. *Barrows*, 58 U. S. 130, 15 L. Ed. 158, this court held that a court of equity cannot make a final decree until all parties essential to the merits of the question are brought in, and that persons having rights which must be affected by the decree, cannot be dispensed with; and this case has been quoted with approval and is controlling in the federal courts.

In the case of *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 46 L. Ed. 499, l. c. 515-516, the court says as follows:

> "The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject-matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the court, the whole case may be seen; but it may not, where all the conflicting interests are not brought out upon the pleadings by the original parties thereto. Story, Eq. Pl. No. 72."

> "The established practice of courts of equity to dismiss the plaintiff's bill if it appears that to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties to the suit is founded upon clear reasons, and may be enforced by the court, *sua sponte*, though not raised by the pleadings or suggested by the counsel. *Shields* v. *Barrow*, 17 How. 130, 15 L. Ed. 158; *Hipp* v. *Babin*, 19 How. 271, 278, 15 L. Ed. 633, 635; *Parker* v. *Winnipiseogee Lake Cotton & Woolen Co.*, 2 Black 545, 17 L. Ed. 333."

Under these decisions, it is clearly the duty of a court, in an equity case, where there are absent parties whose interests would be affected by the decree, and without whose presence there cannot be a complete adjudication of all the rights of the various parties, to dismiss the bill rather than to render any decree whatever; but the court may, if it has sufficient parties before it, render a decree, but such decree, when so made, under the decisions and the rules of the Supreme Court shall be without prejudice to the rights of the absent parties.

The doctrine laid down in the last named cases is reaffirmed by this court in the case of *Garzot* v. *Rios de Rubio*, 209 U. S. 297, 52 L. Ed. 805, opinion being by the late lamented Chief Justice White.

The decision of Justice Brewer in the case of *Reynolds* v. *Stockton*, 140 U. S. 254, 35 L. Ed. 464, is squarely in point here upon the proposition that the rule which determines the conclusiveness of a judgment is that it is conclusive only so far as it determines matters put in issue by the pleadings, and this rule enters into and

limits the constitutional provision as to the full faith and credit which must be given in one state to the judgment rendered in another, and that where a complaint states one cause of action and in that suit there is service upon or appearance of the defendant, and a subsequent judgment is rendered therein, in the absence of the defendant and upon another and different cause of action than that stated in the complaint, that it has no binding force or legal effect and is not only erroneous but absolutely void.

The decision in the above case is very exhaustive, citing the authorities, and particularly citing the language used in the case of *Washington Packet Co. v. Sickles*, 65 U. S. 24, 16 L. Ed. 650, to the effect that the doctrine of *res adjudicata* only becomes applicable where there is identity of the thing demanded, identity of the cause of the demand, and of the parties in the character in which they are litigants.

And so, in this case; not only did the federal court not have jurisdiction of the parties, but the decree, as rendered, is entirely beyond the issues raised by the pleadings in the case, and entirely beyond the scope of the relief granted in such case.

A receiver is a mere custodian of property for the court, and in this case the receiver merely took possession of the assets under the order of the court for a specific purpose, namely, to conserve the same for the creditors of the insurance company, and to sell such assets and apply the proceeds to the payment of claims of creditors under the order of the court.

As previously stated, a sale was ordered; a sale was made conditioned upon approval by the court; but this sale was set aside, and it was never consummated; and the receiver was ordered to deliver back the property to the company—the same company from which he received the property under the orders of the court.

It is said by the plaintiff in error that there was a sale in this case. A sale, however, presupposes a transfer of the title to, and possession of the thing sold to another party. There was no sale in this case. The court, through its receiver, held possession of the property for a time and then surrendered possession to the very source from which it was obtained, so that the use of the word "sale" in this cas is an absolute misnomer.

The evidence in this case shows, conclusively, that the annuity certificate holders in question here were not parties to this suit, and in no way participated with the so called reorganization committee, and had no notice or knowledge of the proposed scheme and plan of reorganization, nor of the kind and character of the decree that was to be made.

Failing, therefore, to show notice of participation to the annuity certificate holders in this case, the defendant plants itself upon the order of the master in chancery, made on the 24th day of July, 1908, that all creditors having claims against the insurance company and the Agency Company should file such claims before him on or before the first day of October, 1908.

Previous to the making of the order referring the claims to the master, and ordering him to give

notice of the hearing of claims by the first of October, 1908, the court had ordered its receiver to sell the property, and no one can doubt that it was the purpose and plan of the court, following the usual and ordinary procedure in receivership cases, to hold the proceeds from such sale and distribute the same among the creditors of the insurance company, who had filed claims before the master and which had been allowed and approved by the court.

The object and purpose of the order made by the court, and of the notice given by the master in chancery, was to give the creditors an opportunity to come in and prove up their claims, so that they might participate, if their claims were allowed, in the distribution of these assets, or rather the proceeds from the sale of the assets.

It is self evident that plaintiff in error in this case concedes that, in order to make this notice by publication of any binding force or legal effect, it must have been followed by a final decree in the case; so plaintiff in error seeks to make the decree of Judge McPherson the final decree, following the publication notice given by the master in chancery.

But the court, by a subsequent order, set aside this order of sale and substituted this order of August 27th for all previous orders given.

The proceedings came to an end without a sale of the property and without any distribution of the assets. The court, by its order of August 27, 1908, placed the assets and property out of which claims could be made beyond his jurisdiction, so that it had no further author-

ity, whatever, over the property; and by its order sought to compel the parties in interest here to purchase stock on the payment of two for one, and the cancellation of their claims against the insurance company.

This order in no way precluded the annuity certificate holders here from relying upon their contracts and enforcing the same.

There had been no default on annuity certificates and holders thereof were not yet creditors.

Again a decision of this court is conclusive upon this proposition, namely, the case of *The Texas & Pacific Railway Co. v. Johnson*, 151 U. S. 81, 38 L. Ed. 81. In that case a suit was brought by Johnson in the Texas Court against Brown, formerly receiver of the Texas & Pacific Railway Company, to recover damages for personal injuries. This suit was instituted September 14, 1888, and on December 17, 1888, was amended by making the Texas & Pacific Railway Company a party defendant.

It was alleged that on December 15, 1885, Brown was duly appointed receiver of the Texas & Pacific Railway Company by the United States Court in Louisiana; that he qualified and performed his duties as such from December 16, 1885, to October 31, 1888, and during that period, operated and managed the property of the defendant railway company in the States of Texas and Louisiana, and during the time of the operation by the receiver, Johnson received personal injuries.

It was further alleged that the receiver was discharged on October 31, 1888, under an order of the

court, requiring that the receiver deliver to the railway company all of its property and assets, earnings and income then in his hands, as such receiver. The order specifically required that the property should be so delivered, subject to the liabilities of the receiver. In the order discharging the receiver, the court decreed that the property so delivered by the receiver to the Texas & Pacific Railway Company should be charged with a lien for the payment of all judgments and claims in favor of intervenors, previously rendered, and as well to judgments that might thereafter be rendered by the court in favor of intervenors who should file interventions prior to February, 1889; and further, that all claims against the receiver should be presented and prosecuted by intervention prior to February 1, 1889, and if not so presented, that the same should be barred and should not be a charge upon the property of the company; and it was further ordered that the receiver advertise the fact of his discharge and give notice to claimants to make claim on or before the 1st of February, 1889.

This decree was pleaded in bar of the plaintiff's cause of action. The plaintiff had judgment in the lower court, which was affirmed by the Supreme Court of Texas, and appeal perfected to the United States Supreme Court.

The court says:

> "The property was no longer in the custody of the Circuit Court, and it had no possession that would be interfered with by the levy of an execution so that defendant in error was not obliged to resort to an intervention in that court before he

could collect, unless he was personally bound to do so by force of an adjudication to that effect operating upon him. In this connection, it should be observed that the property was not sold, but merely redelivered to the company. No judgment *in rem* was entered; no fund existed through a sale in foreclosure; the earnings far exceeded the debts during the temporary management; and it did not appear that either in reference to expenses incurred in the administration or in the matter of claims resting on controverted priorties, or otherwise, there were any equities to be adjusted which required the further exercise of jurisdiction."

"The general equity jurisdiction of the Circuit Court no doubt embraced the authority to hold possession of the property and to determine the rights of all persons who were parties, or who made themselves parties, to the proceedings before it; and if the property sequestrated had gone to sale and a fund had been realized for distribution, then, upon notice appropriate to proceedings *in rem*, the defendant in error might have been found by the disposition thereupon made; yet, not only was there no proof that the notice required by the order was ever given, or any other notice, but the receiver was discharged, his bond cancelled, and the property surrendered, without sale or transfer, so that it is in effect sought to have defendant in error held personally bound by an order to which he was not a party, entered by a court into which he was not brought in any manner. It is impossible to concede that he was in contempt in the recovery of his judgment, or would be in enforcing it against the company's property, but that is the necessary result of the position taken by counsel."

"The order was not a decree *in rem* condemning the particular thing seized, but an order providing for the resumption of possession thereafter, if found necessary, to the end that such a decree might

then be granted; and we are aware of no principle which would justify us in holding that a court, under the circumstances which existed here, could part with its jurisdiction over property by the complete surrender thereof to its owner, and at the same time constructively retain jurisdiction over such property so as in that respect to bind those who would otherwise be unaffected by its orders."

"The case was not one of a fund in court, and the authorities upon the question of limitation of time for the presentation of claims to share in the distribution of such a fund are not in point. It was not a case of purchase in which compliance with stipulated conditions forms part of the consideration, and the extent of the burdens assumed is defined. It did not present the question of the power of the court in the instance of a sale to deliver the property free from any liabilities whatever incurred in administration. And we do not think the Circuit Court attempted to accomplish the result contended for, or that its order is open to the interpretation put upon it by counsel for the company."

And so in this case: the court relieved itself of control and authority over the property, and this judgment was of no binding force nor effect.

Again, this decree of Judge McPherson of August 27, 1908, attempts to deprive the certificate holders of their property without due process of law, in violation of the Fifth Amendment to the Constitution, that no person should be deprived of his property without due process of law.

Without a hearing and without the parties before it, the court canceled and annulled the contracts of the annuity certificate holders with the insurance company, and the decree in this case is absolutely void for that reason.

The court only acquired jurisdiction of the property of the insurance company for a certain specific purpose, and that was, to distribute among the creditors of the insurance company in the satisfaction of claims. That was the purport and purpose of the notice given by the master in chancery, under the direction of the court, so that, even assuming that in this way the court acquired any jurisdiction over the parties in interest here, it acquired no jurisdiction to absolutely wipe out the contractual rights of the parties without any hearing, whatever.

No court has more vigorously condemned such proceedings as has this court.

Thus in the case of *Hovey* v. *Elliott*, 167 U. S. 407, 42 L. Ed. 215, the Supreme Court says:

> "The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence, to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends.
>
> "In *McVeigh* v. *United States*, 78 U. S. 11 Wall. 259 (20-80) the court, through Mr. Justice Swayne, said (p. 267 (81)):

"'In our judgment, the District Court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files. As we are unanimous in this conclusion, our opinion will be confined to that subject. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and hence could have no *locus standi* in that forum. * * * The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice.'"

"And quoting with approval this language, in *Windsor* v. *McVeigh*, 92 U. S. 277 (23-916), the court, speaking through Mr. Justice Field, again said (pp. 277, 278 (915-916)):

"'The principle stated in this terse language lies at the foundation of all well ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal. That there must be a notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim of the charges made; it is a summons to him to appear and speak, if he has anything to

say why the judgment sought should not be rendered. A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, *Appear and you shall be heard; and, when he has appeared, saying, Your appearance shall not be recognized, and you shall not be heard. In the present case, the District Court not only in effect said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation; it was in fact a mere arbitrary edict clothed in the form of a judicial sentence.*'

"This language but expresses the most elementary conception of the judicial function. At common law no man was condemned without being afforded opportunity to be heard. Thus, Coke (2 Inst. 46), in commenting on the 29th Chapter of Magna Charta, says: 'No man shall be disseised etc., unless it be by the lawful judgment; that is, verdict of his equals (that is, of men of his own condition), or by the law of the land (that is, to speak it once for all), by the due course and process of law.'

"Can it be doubted that due process of law signifies a right to be heard in one's defense? If the legislative department of the government were to enact a statute conferring the right to condemn the citizens without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution. If such power obtains, then

the judicial department of the government sitting to uphold and enforce the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their establishment to compel obedience to law and to enforce justice, courts possess the right to inflict the very wrongs which they were created to prevent."

"In *Galpin* v. *Page*, 85 U. S. 18 Wall, 350 (21; 959), the court said (p. 368 (963)):

"'It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered.'"

"Again, in *Ex Parte Wall*, 107 U. S. 289 27: 562), the court quoted with approval the observations as to 'due process of law' made by Judge Cooley, in his Constitutional Limitations, at page 353, where he says:

"'Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College case, 17 U. S. 4 Wheat, 518 (4:629): "By the law of the land is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgments only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."'"

"And that the judicial department of the government is, in the nature of things, necessarily governed in the exercise of its functions by the rule of due process of law, is well illustrated by another observation of Judge Cooley, immediately

following the language just quoted, saying: 'The definition here given is apt and suitable as applied to judicial proceedings which cannot be valid unless they "proceed upon inquiry," and "render judgment only after trial."' "

The term "reorganization" has been much used in this case, and is a misnomer. There was no reorganization of the company. It was the same company when it came out as when it went into the hands of the receiver.

In "Cook on Corporations," 6th Edition, Vol. 3, page 3180, it is said, in substance, that a scheme whereby stock and bonds of a company are re-adjusted as to amount, income or property, is but a recapitalization, and that such an agreement to scale down securities, etc., *cannot be enforced as against any stockholder or bond holder who objects.*

We desire to emphasize the fact that the decree in this case attempted only to enforce the agreement, made between certain stockholders of the Agency Company and certificate holders of the Insurance Company, upon the certificate holders interested here, who did not consent thereto.

In the case of *Jackson Company* v. *Gardiner Inv. Co.*, 200 Fed. 113, it is said that, except under the rules of eminent domain, no owner of property can be compelled to dispose of it at a mere market value, but everyone is justly entitled to hold it for its intrinsic value; and that where protesting *stockholders were given no free option, but were under compulsion to exchange*

the stock which they had for stock in some other company, or to make a substantial sacrifice of that to which they were lawfully entitled, that such an arrangement was not binding upon the protesting stockholders; that a person cannot be forced into contractual relations which he has not voluntarily accepted. And the Circuit Court of Appeals of the First Circuit in this case cites many decisions of the United States Supreme Court in support thereof.

In the case of *Ervin* v. *Oregon R. R.*, 27 Fed. 625, the court held that a majority of the stockholders cannot consolidate the corporation with another and impose responsibilities and hazards upon the minority, not contemplated by the original enterprise, unless express authority for this purpose is conferred upon the majority.

In the case of *Utley* v. *Donaldson*, 94 U. S. 29, 24 L. Ed. 54, the Supreme Court of the United States says:

> "There can be no contract without the mutual assent of the parties. This is vital to its existence. There can be none where it is wanting. It is as indispensable to the modification of a contract already made as it was to making it originally. Where there is a misunderstanding as to anything material, the requisite mutuality of assent as to such thing is wanting; consequently, the supposed contract does not exist, and neither party is bound. In the view of the law in such case, there has been only a negotiation, resulting in a failure to agree. What has occurred is as if it were not, and the rights of the parties are to be determined accordingly."

Again, we say, if there can be no contract without mutual assent, how can it be said that a court can force a dissenting party to accept the terms of a contract?

When this so-called reorganization committee came before Judge McPherson, it represented only a portion of the parties in interest. Even assuming that it represented a majority of the parties in interest, these parties had agreed among themselves upon certain contractual relations. They did not secure the assent of the parties in interest here to the making of this arrangement, but the court attempted to force these parties to consent thereto without making any provision of any kind for the security of their claims. Under all of the decisions we say that this cannot be done.

Now let us analyze the annuity certificates or contracts of obligation.

Taking the first count of the petition. On August 5, 1907, John Kesl paid to the insurance company the sum of $150.00, and the insurance company issued to him its annuity certificate No. 391 (Tr. Rec. 12). This certificate recites that whereas the Great Western Life Insurance Company is desirous of qualifying for the writing of life insurance in a number of states to the end that a large volume of business may be quickly and economically produced, and whereas the company is authorized by its charter to carry on the business of insurance upon the lives of individuals and every insurance pertaining thereto, and to grant, purchase and dispose of annuities and endowments, and is specifically authorized by

resolution of its Board of Directors to dispose of annuities in the various states in which it desires to write life insurance, upon the basis, at par, of $150.00 per share, and whereas John Kesl had paid to the company for one share, $150.00; Therefore, in consideration of such payment the company agreed to allow and to pay to the Kesl, an annuity during his life, and thereafter to his heirs or personal representatives, of one share of the proceeds of 25 cents per each $1,000 of all insurance (except re-insurance) written by the company in the United States for fifty years from the date of its incorporation on which premiums computed on the annual basis had been received in cash, and also for so long thereafter as premiums were received by the company, and then follows the method of computing the apportionment, and the company guaranteed that the first annuity should not be less than eight per cent upon the amount paid the company therefor, and that the certificate was assignable, in writing, and transferable only on the books of the company, or in person, or by attorney upon presentation of the certificate at the Home Office of the company (Tr. 69-70).

And an amendment to most certificates prepared by the company, and consented to by the holders, was that this annuity shuld be paid, not out of the premiums, but out of the earnings of the company; but no other change was made in any of the provisions (Tr. Rec. 72-73).

Now, it is further provided in this certificate, and in all others, that computation of the amount payable to a certificate holder should be ascertained at

the end of each calendar year, the same divided by 500, and the quotient obtained should be apportioned to each of said shares, and should be paid within thirty days thereafter.

Under the terms of this contract, the insurance Company received from John Kesl $150.00—the company desiring such $150.00 so as to create a large volume of business, and to qualify for the writing of life insurance, undoubtedly meaning that the company desired this money so that it could use the same in extending its insurance business, using it for the employment and pay of agents to solicit insurance contracts.

Now under this contract, at the end of each calendar year (which would be the 31st of December of each year), the company obligated itself to make an apportionment to John Kesl, and to each of the other annuity certificate holders, and to pay the moneys that were owing to John Kesl, and each of the other annuity certificate holders, within thirty days thereafter, or about the 31st of January after the end of each calendar year.

Now, John Kesl was paid his annuity of eight per cent which was apportioned at the end of the calendar year of 1907, and another dividend or another annuity would not become due until the end of the next calendar year, or December 31, 1908, provided there were premiums or net earnings out of which to pay the same, and this would become payable on the 31*st of January*, 1909.

These receivership proceedings intervened in May,

1908, and at that time, the company was owing John Kesl, nothing whatever.

Cal these certificates what you will, they certainly constituted a contractual obligation and relation between John Kesl, his heirs, representatives and assigns, and the Great Western Life Insurance Company.

Now, take the Federal decree: The court said to John Kesl, "You surrender and cancel this certificate, and pay $37.50, and you take $18.75 of stock of the Great Western Life Insurance Company in lieu thereof or be wiped out." The court wished to compel John Kesl, without his consent, to swap one kind of a contract, for another and entirely different kind of contract.

If one is forced to enter into a contract through fraud or duress, it is no contract. There must be a meeting of the minds of the parties in order to constitute a contract. If a contract obligates one party but not the other, it is unilateral and not binding upon either, and this decree was absolutely null and void.

The case of *Hollister* v. *Stewart*, 111 N. Y. 644, was a case in which a trustee, named in a mortgage, began a suit to foreclose, and, under the terms of the mortgage, took possession of the railroad covered by the mortgage, and thereafter joined with someof the bond holders and others in a plan of reorganization of the company that contemplated the substitution of three mortgages and some other obligations. One of these mortgages for $400,000.00 was made a first lien on all the property of the company. The plaintiff, a bond holder under the mortgage being foreclosed, never as-

sented to this arrangement, but it was attempted to bind the plaintiff by this reorganization agreement.

The New York court says:

"The scheme of reorganization could only be made effective in one of two ways—*by the consent of all the bond holders*, or by a foreclosure cutting off their lien, and so enabling a new corporation to make its own mortgage in its own way. *The plaintiff had a clear right to stand upon his contract, and the trustees had no power or authority to compel him to make a new and different one.* We are not concerned with his motives, but only with his rights. Without his consent, the company and the trustees, the other parties to the contract, could not vary its terms and divert to new securities the funds pledged by the mortgage to its payment. The proposition is almost too plain for argument. Unless railroad syndicates or committees are to be put above the constitution, the trustees cannot set aside and change their contract with plaintiff, of their own volition, without his consent. The authorities for any such rights are necessarily either unsound or inapplicable, and an illustration of their lack of pertinency is found in *Canada & Southern R. Co.* v. *Gebhard*, 109 U. S. 527."

In this New York case, the court cites the *Canada Southern R. R. Co.* v. *Gebhard*, 109 U. S. 527, 27 L. Ed. 1020. In that case the Canada Southern Railroad Company was incorporated on the 28th of February, 1868, by the Legislature of the Province of Ontario, and was authorized to issue negotiable coupon bonds for completing and maintaining the railroad, and under such authority the railroad company, in 1871, issued something in excess of eight millon dollars of bonds, with coupons attached to the bonds, falling due in the year

1906. The principal and interest were payable at the Union Trust Company in the City of New York, and to secure the payment of the principal and interest, the mortgage was executed by the company covering the railroad.

Before December 31, 1873, the company became satisfied that it would be unable to meet the interest on these bonds maturing in January, following, and so it requested the holders to fund their coupons falling due January 1, 1874, and the year following, by converting them into new bonds, payable on the first of January, 1877, and by so doing, only, in legal effect, extend the time for the payment of interest, without destroying the lien of the coupons under the mortgage, or otherwise affecting the obligation of the old bonds.

Some of the bond holders funded their coupons in accordance with this proposition, and accepted the extension bonds.

The Parliament of Canada on the 26th of May, 1874, enacted that this railroad be declared to be a work for the general advantage of Canada. In March of 1875 another series of bonds, amounting to an excess of two million dollars, was issued and secured by a second mortgage; and after the issue of all the bonds the company found itself unable to pay the interest, and otherwise financially embarrassed, and a joint committee submitted to the company and to the bond holders a scheme of arrangement of the affairs of the company, which contemplated the issue of fourteen million dollars of thirty year bonds, to be secured by first mort-

gage on the property of the company, and to be exchanged for the old bonds at certain specified rates. The old bonds of 1871 were to be exchanged for new at the rate of $1.00 of principal of the old, for $1.00 of the new.

This scheme was formally assented to by the holders of something like 108,000 of the capital stock out of 150,000, and by the holders of 1871 bonds to the amount of seven million, a total of eight million; and upon the representation of these facts to the Parliament of Canada, the "Canada Southern Arrangement Act of 1878" was passed and assented to; and this scheme was adopted by the Parliament and enacted into law as an arrangement for the rehabilitation of the company.

The holders of the first issue of bonds, who had never taken part in the appointment of the joint committee, or assented to this arrangement, brought suit upon such bonds and coupons, and the company pleaded this scheme of arrangement as a defense, and at the trial "tendered the new bonds in exchange for the old." The Circuit Court decided that the arrangement was not a bar and gave judgment against the company upon such bonds and coupons; the question was whether this Agreement Act was valid and binding upon the bond holders, citizens of the United States. This court held that it was; but, in the opinion, this language is used:

> "In the absence of statutory authority or some provision in the instrument which establishes the trust, nothing can be done by a majority, however large, which will bind a minority without their

> consent. Hence it seems to be eminently proper that where the legislative power exists, some statutory provision should be made for binding the minority in a reasonable way by the will of the majority; and unless, as is the case in the States of the United States, the passage of laws impairing the obligation of contracts is forbidden, we see no good reason why such provision may not be made in respect to existing as well as prospective obligations."

But, in that case, it will be perceived that the bonds were made in Canada; that the security was located in Canada; and consequently the obligation was determined by the laws of Canada; and the Supreme Court says that this arrangement was legal and valid because authorized under the law; but that, unless such an arrangement is expressly authorized by law, it has no legal or binding force or effect against the minority who do not consent thereto.

Article I, Section 10, of the Constitution of the United States, provides:

> "No state shall * * * pass any * * * law impairing the obligation of contracts. * * *"

The Federal Court is not a legislative body. The Constitution prohibits any state from passing any law impairing the obligation of contracts. Congress is also prohibited from passing any law that impairs the obligation of contracts.

If Congress, which created the Circuit Court of the United States for the Western Division of the Western District of Missouri, is without authority to pass any

law impairing the obligation of a contract, how can this creature of Congress make a decree impairing the obligation of a contract?

The case of *Windsor* v. *McVeigh*, 93 U. S. 274, 23 L. Ed. 914, draws the distinction between a void judgment and one that is voidable.

This was an action to recover certain real property in the State of Virginia, the proceedings being instituted under the Acts of Congress of July 17, 1862, being entitled "An Act to Suppress Insurrection, to Punish Treason and Rebellion, to Seize and Confiscate the Property of Rebels, and for Other Purposes."

Acting under instructions from the attorney general, the United States Marshal in July, 1863, seized the premises in controversy; and afterwards a libel against the property was filed in the name of the United States, setting forth that the plaintiff in the present action was the owner of property, that he had held an office of honor and trust under the government of the Confederate states, and that the property had been seized and forfeited to the United States and should be condemned, and closed with the prayer that process might issue against the plaintiff and owners of the property, and warning them at some early date to appear and answer, and that an order of publication issue to the non-resident owner of the property.

The owner of the property, in response to the notice, appeared by counsel and filed a claim to the property and an answer to the libel. Subsequently, the district attorney moved that the claim and answer and ap-

pearance of the respondent by counsel be stricken from the files, on the ground that it appeared that he was at the time of filing the same, a resident within the City of Richmond, within the Confederate lines, and a rebel.

This motion was granted and the answer ordered to be stricken from the files. The appearance of the owner of the property was by this answer. The court immediately entered its sentence, condemning the property as forfeited to the United States; and the question in this ejectment suit, brought by the former owner of the property, and who appeared in the libel case and filed his answer, was whether he was bound by that decree.

The court says:

> "That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. A denial to a party, of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party: appear, and you shall be heard; and when he has appeared, saying: your appearance shall not be recognized, and you shall not be heard. In the present case, the District Court not only in effect said this, but immediately added a decree of condemnation, reciting

that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation; it was, in fact, a mere arbitrary edict, clothed in the form of a judicial sentence.

"The law is, and always has been, that whenever notice or citation is required, the party cited has the right to appear and be heard; and when the latter is denied, the former is ineffectual for any purpose. The denial to a party in such a case, of the right to appear, is in legal effect the recall of the citation to him. The period within which the appearance must be made and the right to be heard exercised, is, of course, a matter of regulation, depending either upon positive law, or the rules or orders of the court, or the established practice in such cases. And if the appearance be not made, and the right to be heard be not exercised, within the period thus prescribed, the default of the party prosecuted, or possible claimants of the property, may, of course, be entered, and the allegations of the libel be taken as true for the purpose of the proceeding. But the denial of the right to appear and be heard at all is a different matter altogether."

"The doctrine invoked by counsel, that, where a court has once acquired jurisdiction, it has a right to decide every question which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed is, undoubtedly correct as a general proposition; but, like all general propositions, is subject to many qualifications in its application. All courts, even the highest, are more or less limited in their jurisdiction; they are limited to particular classes of action, such as civil or criminal; or to particular modes of administering relief, such as legal or equitable; or to transactions of a special character, such as

arise on navigable waters, or relate to the testamentary disposition of estates; or to the use of particular process in the enforcement of their judgments. *Norton* v. *Meader*, 4 Sawy., 603, Circuit Court of California. Though the court may possess jurisdiction of a cause, of the subject matter and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law. If, for instance, the action be upon a money demand, the court, notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant. If the action be for libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will. Instances of this kind show that the general doctrine stated by counsel is subject to many qualifications. The judgments mentioned, given in the cases supposed, would not be merely erroneous; they would be absolutely void; because the court in rendering them would transcend the limits of its authority in those cases. See the language of Mr. Justice Miller, to the same purport, in the case of *Ex parte Lange*, 18 Wall. 163 (85 U. S. XXI, 875). So it was held by this court in *Bigelow* v. *Forrest*, 9 Wall. 351 (76 U. S. XIX, 700), that a judgment in a confiscation case, condemning the fee of the property, was void for the remainder, after the termination of the life estate of the owner. To the objection that the decree was conclusive that the entire fee was confiscated, Mr. Justice Strong, speaking the unanimous opinion of the court, replied: 'Doubtless a decree of a court, having jurisdiction to make the decree, cannot be

impeached collaterally; but, under the Act of Congress, the District Court had no power to order a sale which should confer upon the purchaser rights outlasting the life of French Forrest (the owner). Had it done so, it would have transcended its jurisdiction.' *Bigelow* v. *Forrest*, (*supra*).

"So a departure from established modes of procedure will often render the judgment void; thus, the sentence of a person charged with felony, upon conviction by the court, without the intervention of a jury, would be invalid for any purpose. The decree of a court of equity upon oral allegations, without written pleadings, would be an idle act, of no force beyond that of an advisory proceeding of the chancellor. And the reason is that the courts are not authorized to exert their power in that way.

"The doctrine stated by counsel is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it. The statement of the doctrine by Mr. Justice Swayne, in the case of *Cornett* v. *Williams*, reported in the 20th of Wallace is more accurate. 'The jurisdiction,' says the justice, 'having attached in the case, everything done, within the power of that jurisdiction, when collaterally questioned, is held conclusively of the rights of the parties, unless impeached for fraud.' 20 Wall. 250, (*Nash* v. *Williams*, 87 U. S. XXII, 259)."

In *Lewis* v. *Peck*, 154 Fed. (C. C. A.) the court said, l. c. 279:

"The doctrine is well established that the right of a court of equity to decide all questions arising in the case, when jurisdiction is once acquired is

> subject to important limitations; that it extends to controversies which arise and are submitted to by proper proceedings between adverse parties * * * When a court transcends the limits of its authority in a given case, its orders are void not merely erroneous."

Windsor v. *McVeigh* is directly in point in the instant case, and upon the law as declared by this court therein, we could well submit our case without further citation of authority.

From this decision, it conclusively appears that, where a court in rendering a judgment, transcends the limits of its authority in such case, the judgment is absolutely void; that where a judgment transcends in the extent or character of the same, the law which is applicable to it is that the judgment is not only erroneous, but is absolutely void and of no effect, and is subject to collateral attack.

IV.

Defendant in error and assignors not estopped as claimed by plaintiff in error.

Counsel bases this contention upon the theory that the plaintiff having actual notice of the Wagstaff case and being present, representing himself and another certificate holder, is now estopped from claiming that the decree did not also bar the certificates in question here.

It is true that Mr. Sherman appeared in the Wagstaff case on behalf of himself and one other petition, but he in no way represented the certificates now in ques-

tion in this case. Furthermore, the United States Court gave him the relief asked for; that is, that his note for $1250.00 given for the certificate should be surrendered and cancelled, and the court made an order. The court went further, however, and said that those certificate holders who had paid cash for their certificates, should be entirely wiped out and their certificates cancelled, leaving them without any redress whatever, unless, perchance, they desired to pay in more money, cancel their contract, and assume and enter into another contract.

The plaintiff did not represent the parties now in interest in any way whatever.

Furthermore, no party is ever estopped by a void judgment. A void judgment amounts to nothing and binds no one.

The certificate holders who surrendered their certificate and took stock in the Great Western Life Insurance Company were not bound and estopped from ever asserting any other claim as against the Great Western Life Insurance Company by reason of this decree of Judge McPherson, but they were estopped by their own voluntary act in entering into this contract with the Great Western Life Insurance Company whereby they surrendered and cancelled their certificates, and took upon themselves a new obligation.

Further contention is made by defendant that the original annuity certificate holders and the assignors of plaintiff, having had notice of the proceeding in the Federal Court in the Wagstaff case, are bound thereby and

had no right or cause of action to transfer by assignment.

This is but another method of stating that the decree cancelled the certificates. If the decree was void, it makes no difference how many notices or kinds of notices were given to the parties. They can attack such a decree anywhere, at any time, and in any place. The large number of authorities cited by counsel to the effect that presumptively mailed matter reaches the addressee, has nothing to do with this case, and neither do the other authorities cited in any way touch the point.

The Supreme Court of Missouri held in the case of *Givens* v. *Harlow*, 251 Mo. 233, l. c. 242, that "A void judgment is subject to attack in a collateral proceeding, and has always been so held."

The same court also held in the case of *Jewett* v. *Boardman*, 181 Mo. 647, at page 646, with reference to the judgment in that case, "this judgment being invalid on the face of its whole record, is doubtless subject to a collateral attack."

The decree in this case was absolutely void; hence, as suggested, subject to attack anywhere and at any place.

Furthermore, the evidence does not show that any of the annuity certificate holders paid in money upon the strength of the decree, or considered the question as to whether or not the decree was valid and binding.

Stevenson, a witness called by defendant Ins. Co., and who became president of the Great Western after the receivership was dissolved, testified that the money had

been paid in practically prior to the issuance of the decree, and meetings had been held previous thereto. He could not recall whether at the meetings it was discussed that those who did not come in would be barred, or not.

> "Q. Was it discussed as to what would happen to them, or what their status would be?
> A. No, sir; I don't think it was, because we didn't know at that time. Of course, we felt very hopeful that we would complete the raising of the money after the first appearance before the Federal Court, and two extensions of time were given that the company would be reorganized (Tr. Rec. 319-320).
> Q. *And you didn't pay in your money in the reorganization based on the theory that all annuity certificate holders were coming in? You didn't know whether they were or not, did you?*
> A. *No, sir.*"

So that none of the parties who participated in this so-called reorganization did so upon the belief or understanding that all certificate holders would come in. They did not put in their money upon the belief that such parties would come in, and even if they had, it would not have estopped the parties in question in this case for the reason that they were not parties to the suit, and furthermore, the decree which was sent out, was not sent until a week or ten days after the decree was actually made. There is not a single element of estoppel. There were no representations made, either affirmatively or by silence by the parties in question here that led anyone to act to its disadvantage.

The rule is stated in Pomeroy's Equity Jurisprudence, 3rd Ed. Sec. 812:

> "812. Same. The Conduct must be Relied upon, and be an inducement for the other Party to Act.—Whatever may be the real intention of the party making the representation, it is absolutely essential that this representation, whether consisting of words, acts, or silence, should be believed and relied upon as the inducement for action by the party who claims the benefit of the estoppel, and that, so relying upon it and induced by it, he should take some action. The cases all agree that there can be no estoppel, unless the party who alleges it relied upon the representation, was induced to act by it, and thus relying and induced, did take some action. Finally, this action must be of such a nature that it would have altered the legal position of the party for the worse, unless the estoppel is enforced. He must have placed himself in such a situation that he would suffer a loss as the consequence of his action, if the other party were allowed to deny the truth of his representation, or repudiate the effects of his conduct. Although this action is usually affirmative, yet such affirmative action is not indispensable. It is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss."

In this case, it is not what the parties did or represented, nor what they did not do of which counsel complains. There is no merit in this contention .

The Supreme Court of Missouri said in *DeLashmutt* v. *Tector*, 261 Mo. 412, l. c. 443:

> "If no one has been misled to his damage, if no injury has arisen from the conduct or silence of

a party, he will not be estopped from contradicting them; and a party will not be allowed to avail himself of an estoppel when he knew or had the same means of knowledge as the other party."

V.

Plaintiff in error solemnly agreed with the State of Missouri and all parties concerned (Art. 111 Merger contract, Tr. Rec. 130) that one suit might be brought to test the claims of annuity certificate holders, which would give the Supreme Court of Missouri jurisdiction, and it was provided that if the Supreme Court of Missouri should hold the annuity certificates valid and subsisting contracts or obligations of plaintiff in error, then plaintiff in error would abide by that decision. This was a waiver of the right of plaintiff in error to proceed further, and, therefore, plaintiff in error is estopped to appeal to this court for review.

U. S. Consolidated Seeded Raisin Co. v. *Chaddock & Co.*, 173 Fed. (C. C. A. 9th Circuit), 577 l. c. 579.

Appeal in Error, 3 Corpus Juris p. 661.

Before a merger of an insurance company is permitted in Missouri by law, the merger must be approved by three insurance superintendents, one from the State of Missouri, the other two to be chosen from two other states. This commission was composed of Frank Blake, Superintendent of Insurance of Missouri, Ike S. Lewis, Superintendent of Insurance for the State of Kansas, and B. L. Gill, Commissioner of Insurance and Banking of the State of Texas (Tr. Rec. 122-123). These various annuity certificate holders, respondents here, protested against the merger of the Great Western Life In-

surance Company with the International Life Insurance Company, and with reference to the claims of these annuity certificate holders the following stipulation was included by *agreement of parties* in the Articles of Consolidation finally approved by the commissioners (Tr Rec. 131):

> "An order to preserve all the rights, if any, of the holders of annuity and investment certificates heretofore issued by The Great Western Life Insurance Company and allow them all of the dividends or payments to which they might be entitled under such certificates in the event The Great Western Life Ins. Co. should have continued in the life insurance business for the full term provided in such certificates and to pay any amounts already due thereon, the International Life Insurance Co. for itself and its successors, *hereby agrees* that as to the said certificates *one suit may be brought in the courts of Missouri for such an amount as would give the Supreme Court jurisdiction thereof on appeal, and the final judgment in such suit should be binding upon the International Life Insurance Company and its successors for all the certificates of the class or classes adjudicated in said suit, and in the event that the final decision in said suit shall be that the annuity and investment certificates issued by The Great Western Life Insurance Company are valid and subsisting contracts and obligations against that company, then the said International Life Insurance Company agrees that it will pay to the holders or owners of such certificates, the amount paid as the purchase price of such certificates.*"

We make the further contention that in *agreeing* to this order as above set forth, the petitioner for this writ

voluntarily waived any right of proceeding further than the decision of the Supreme Court of Missouri. The suit filed was such as contemplated when this order was made. A decision was rendered by the Supreme Court *in banc* holding plaintiff entitled to recover, and we feel we are within the proprieties in saying that an end should be had to the delay and plaintiffs should be entitled to the rewards of their victory.

VI.

This is not a case for the application of the rule of "virtual" or "class" representation. These annuity certificate holders were necessary parties and their rights could not be foreclosed or they be compelled to assume new contractual obligations since they were not parties in this case.

Garzot v. *Rios de Rubio*, 209 U. S. 283, l. c. 297, 52 L. Ed. 794, l. c. 800.
Foster's Federal Practice, (6th Ed.) Vol. 1, Sec. 120, p. 724.
See cases cited 1, "Points and Authorities."

Conclusion.

The decision of this Great Court in this case will mark the end of a long struggle by these annuity certificate holders for simple justice.

A review of the facts of this case will show that the $330,000 quickly furnished this insurance company by these annuity certificate holders, made it possible for the company to live, and to put upon its books nearly $24,000,000.00 worth of insurance when it went into the hands of the receiver through the mismanagement of its

officers and promoters interested in these companies. According to Judge McPherson's statement in his order of August 27th, 1908, about 50 per cent of these annuity certificate holders had come in and agreed to the plans of the voluntary reorganization committee. Subsequently, and before trial, others, perhaps tiring of the long delay, came in and cancelled their contracts and assumed new burdens, but the annuity certificate holders represented by defendant in error—call them irreconciliables if the term appears appropriate—stood out stanchly at all times upon the simple proposition that they had in good faith invested their money in these certificates, and that they would not cancel these obligations and take on new ones in a company which had so grossly misled and deceived them. The company came out of the Federal Court the same as it went in, practically the only change being in the personnel of the officers. The company engaged in business until it was merged with the International Life Insurance Company When an attempt was made to merge the Great Western Life Insurance Company with the International Life Insurance Company, the same certificate holders who are now appealing to this court for justice, appeared by counsel before the merger commission, and even brought suits to restrain and prevent the merger. Testimony of A. F. Sherman, (Tr. Rec. 317). They succeeded in that fight in compelling the International to take over the Great Western Life Insurance Company *cum onere*, and the merger was only permitted when the International Life Insurance Company finally agreed to pay these pre-

testing certificate holders if the Supreme Court of Missouri held their claims were just and valid. In the State Supreme Court the defendants earnestly contend that these contracts were *ultra vires*. The Supreme Court of Missouri decided that even if the contracts were *ultra vires*, this was no answer to this suit for the repayment of the money invested in them.

The International took over the company knowing that immediately a suit would be filed by these very certificate holders, represented by defendant in error, and a part of the valuable assets in the possession of the International Life Insurance Company consists of the money of these defendants in error.

This case was before the Supreme Court of Missouri in Division 1 first, where it was twice orally argued, and was then transferred to the court *en banc*, where it was again reargued. We commend to the court a reading of the opinion of the Supreme Court *en banc* by Judge Ragland, as a clear, concise statement of the facts in this case, and the law applied shows it is in harmony with the decisions of this Great Court.

We believe there is no ground for review here, but if in this we are in error, we still maintain that the judgment of the Supreme Court of Missouri in this cause is a righteous one and should be affirmed.

Respectfully submitted,

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Office Supreme Court, U. S.
FILED
MAR 7 1922
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 797. 295

INTERNATIONAL LIFE INSURANCE COMPANY,
PETITIONER,

vs.

ADRIAN F. SHERMAN, RESPONDENT.

PETITION.

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys and Counsel for Petitioner.

COOPER, NEEL & WRIGHT,
Of Counsel.

(28,752)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 797.

INTERNATIONAL LIFE INSURANCE COMPANY,
PETITIONER,

vs.

ADRIAN F. SHERMAN, RESPONDENT.

The Petition of International Life Insurance Company, a Corporation, for Writ of Certiorari Directed to and Requiring the Supreme Court of the State of Missouri to Bring Before the Supreme Court the Case of Adrian F. Sherman, Plaintiff and Respondent, vs. International Life Insurance Company, a Corporation, Defendant and Appellant.

To the Honorable Judges of the Supreme Court of the United States:

The petition of the International Life Insurance Company respectfully shows to this honorable court as follows:

FIRST. Your petitioner, International Life Insurance Company, is a corporation organized under the laws of the State

of Missouri and is engaged and authorized to engage i carrying on and transacting the business of life insuranc in the State of Missouri and various other States.

SECOND. In the year 1907 a life insurance company known as the Great Western Life Insurance Company, wa organized and incorporated under the laws of the State o Missouri (all the capital stock of which, except qualifying shares of the directors, was owned by the Great Western Agency Company, a Colorado corporation) and said company engaged in the business of life insurance in the State o Missouri and other States until May, 1908, at which time certain stockholders of the Agency Company and other in terested parties filed in the United States Circuit (now District) Court at Kansas City, Missouri, a suit setting up grounds for equitable relief for themselves and for the holders of certain so-called annuity certificates which had theretofore been issued by said Great Western Life Insurance Company. The petition alleged diversity of citizenship, mismanagement, insolvency, avoidance of a multiplicity of suits, and *ultra vires* acts in issuing certain so-called annuity certificates, and asked for the appointment of a receiver and an adjudication and settlement of the rights of all persons having an interest in said Great Western Life Insurance Company. Said cause was entitled "J. M. Wagstaff *et al. vs.* Great Western Agency Company, Great Western Life Insurance Co., *et al.*," in equity, No. 3367.

Upon the filing of said petition, bills of intervention on the part of Adrian F. Sherman, respondent herein, as the then holder of certain of said annuity certificates and on the part of numerous other holders of said certificates were filed in said suit. The record of said cause contains the following entries:

"F. M. Pearl and other stockholders of the Great Western Agency Company, and annuity certificate holders of the Great Western Life Insurance Company, said parties appearing by E. A. Barry and James W. Orr, their solicitors."

"A. F. Sherman, Esq., appearing for himself and certain OTHER ANNUITY CERTIFICATE HOLDERS."

There is no evidence in the record that the then holders of the certificates here sued upon were not present in court either personally or by counsel.

In the bill of intervention filed by said Sherman, respondent herein, he alleged that said Great Western Life Insurance Company was not authorized by its charter to issue the so-called annuity certificates, and had no power or authority whatever for so doing, and for that reason asked for and obtained an order in said suit cancelling a promissory note which he had given in payment of his said annuity certificates.

Upon a hearing, the United States Circuit Court appointed a receiver for said Great Western Life Insurance Company (as well as the Agency Company) and ordered and directed that the assets of both companies be sold. A master was appointed to receive and hear all claims against the insurance company, and it was ordered by the court that ALL PERSONS having claims against said company be required to file the same not later than OCTOBER 1, 1908, or be forever thereafter barred. Pursuant to an order to that effect the master gave due public notice to all creditors and claimants to present their claims on or before October 1, 1908, or be forever thereafter barred.

Upon an inventory of the assets of said insurance com-

pany, it was ascertained and determined that its indebtedness, wholly excluding said annuity certificates or claims based thereon, greatly exceeded its assets, including its capital stock, and was greatly in excess of the amount that had been bid and offered to the receiver for the business and assets of said insurance company. Upon the ascertainment of said company's financial condition, the annuity certificate holders, together with certain stockholders of the agency company made application to the court to reject the bids and offers that had been made for the business and assets of said company, pointing out that the same would provide no funds or dividends for the stockholders of the Agency Company or the holders of annuity certificates, and submitted to the court a plan of reorganization which had been formulated by the annuity certificate holders and certain stockholders of the Agency Company at largely attended meetings which they had theretofore held and at which they had also employed counsel for the protection of their interests in said suit. Said plan provided for a complete reorganization of the company and the manner in which the stock of the company should be disposed of. It gave the stockholders of the Agency Company and the annuity certificate holders the preference in the acquisition of the stock and prescribed the terms upon which they might acquire the same. The plan submitted was, after extended hearings and mature consideration thereof by the court, duly approved and the court thereafter made and entered an order and judgment, the pertinent parts thereof reading:

> "Inasmuch as the plan of reorganization of the said Life Insurance Company has provided that any stockholder of The Great Western Agency Company

may upon the payment of the sum equal to four dollars per share of the capital stock in said Agency Company, be entitled to so much of the capital stock of the said Life Insurance Company as will equal one-half of the amount so paid, and inasmuch as a large number of said stockholders have not yet availed themselves of this, it is by the court ordered that for a period of sixty days from and after this date, any stockholder desiring to avail himself of such privilege may do so and the said Life Insurance Company shall receive such payment, and thereupon issue to such person the stock of the said Life Insurance Company in the proportion above specified.

"Whereas it has further been the plan of the said reorganization of the said Life Insurance Company to permit holders of so-called annuity certificates heretofore issued by the said Life Insurance Company, upon the payment of the sum of $37.50 upon each share of such certificates and upon the surrender and cancellation of such certificates to receive of the capital stock of the said Life Insurance Company stock of the said company of the par value equal to one-half of the amount of such payment.

"Certain certificate holders have already agreed to this, aggregating more than one-half thereof, and all such annuity certificate holders who have not so done are hereby given the privilege of so doing for twenty days from date hereof, to avail himself of such privilege, and any such annuity certificate holder failing to so avail himself within such period of time of 20 days from this date shall no longer have such privilege or right, and such annuity certificate holders shall thereafter be barred and estopped from making any claim of any kind whatsoever against said Life Insurance Company or officers or stockholder thereof, or against any assets of said company, and

such annuity certificates will then and thereby be fully canceled in law and in equity, and such annuity certificate holders will have no further rights, claims or demands against said company, its officers, stockholders, assets or property on account thereof.

* * * * * * *

"Other claims now or that may hereafter be asserted, not hereinbefore covered, are passed for the future consideration of the court.

* * * * * * *

"It is further ordered and decreed that the jurisdiction of this court is fully retained, extended and continued from time to time until this cause is finally concluded, over all subjects-matter covered by any pleading now on file or that later on may be filed, and over all parties whose names are now on the record and such other party or parties as may later on be brought into court, or who may come into court by any pleading. And all such parties now to the record, including the said The Great Western Life Insurance Company, and all parties who may later on be made parties herein, shall be bound by such further orders and decrees as to the court may seem necessary and proper. All of which are ordered of record this August 27, 1908."

In this same order and judgment the court, by an express provision, retained and continued its complete jurisdiction of the subject-matter and all parties and this continued until October 14, 1912, when, it being made to appear to the satisfaction of the court that the cause was finally concluded over

all subjects and all parties, the court ordered and decreed that the matter be finally closed.

The holders of the certificates here sued upon did not, prior to October 1, 1908, or at any time thereafter, although the court's jurisdiction continued until October 14, 1912, present their claims to the master for allowance, but, on the contrary, did nothing.

THIRD. A copy of the court's aforesaid decree relating to the rights of the certificate holders was mailed, postage prepaid, to each annuity certificate holder to his last known address. Approximately 85 per cent of the holders of said annuity certificates participated in the reorganization and took stock in the reorganized company upon the basis and in accordance with the terms prescribed in said decree.

FOURTH. The said so-called annuity certificates were issued in consideration of the payment to the company by the purchaser of the sum of one hundred fifty ($150) dollars per share, and provided that for a period of fifty (50) years, and so long thereafter as the premiums were paid on said insurance, each certificate should receive one share of the proceeds of twenty-five cents for each one thousand ($1,000) dollars of all insurance written by the company, the sum so payable to be determined as follows:

> "The aggregate of the said twenty-five cents per $1,000 of insurance shall be ascertained at the end of each calendar year, and such sum divided by 500; the quotient obtained shall be the apportionment to each of said shares and the total of — shares thereof shall be the annuity payable hereunder."

The rights of all holders were identical and the financial returns to which the certificates entitled them were to be created by the same means and paid from one community fund. No action could affect one without likewise and identically affecting each and all.

The certificates contained no provision for the repayment of the sums paid therefor, nor are they in any manner conditioned upon any expectancy of life or other essential element of life insurance. The payments provided for were not conditioned upon the earnings or financial condition of the company. The suit prosecuted by respondent herein was not based upon the certificates, but upon a rescission thereof and for the money paid therefor.

FIFTH. In 1913 Adrian F. Sherman, respondent herein, caused such certificate holders as had not surrendered their certificates for stock in the reorganized company, and some who had, to execute assignments to him of their certificates, and in April, 1913, he filed in the Circuit Court of Jackson County, Missouri, an action in assumpsit to recover the cost or price which his assignors had paid for such certificates. The action was one for money had and received and was against your petitioner, petitioner having in 1912 reinsured all of the life-insurance business of said reorganized Great Western Life Insurance Company and assumed all of its obligations.

SIXTH. At the trial of this cause in the Circuit Court of Jackson County, Missouri, the defense was interposed by petitioner, by an answer and proof, that the final judgment rendered by the United States Circuit (now District) Court for the Western Division of the Western District of Missouri

in said cause No. 3367, entitled "J. M. Wagstaff *et al. vs.* Great Western Agency Company and Great Western Life Insurance Company *et al.*," was a bar to said action, and that the claims and causes of action sued on therein were fully and finally determined and adjudicated by said United States court adverse to plaintiff and his assignors, who were parties to said suit. At every stage of the action this defense of *res judicata* or former adjudication was interposed and urged as a bar.

The trial court held and decided that such judgment and decree of the United States court was not binding on plaintiff Sherman or his assignors and was not a bar to an action on said annuity certificates, nor to the action or claims or causes of action sued on therein, and gave judgment for said plaintiff against petitioner in the aggregate sum of forty-seven thousand four hundred sixty-three and 90/100 ($47,463.90) dollars and interest. The trial court before rendering judgment against petitioner refused to give declarations of law numbered 2, 3, and 5 duly and timely requested by petitioner and reading as follows:

"II.

"The court declares the law to be that the decree and judgment of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company and others, is binding and conclusive upon the plaintiff, and plaintiff is thereby barred from maintaining this action and the judgment herein must be for and in favor of the defendant.

"III.

"The court declares the law to be that if the plaintiff acquired the certificates described in the petition subsequent to the decree rendered by the United States Circuit Court for the Western Division of the Western District of Missouri, in the case of Wagstaff against the Great Western Life Insurance Company *et al.*, and with knowledge of such decree, then he cannot recover in this case, and the finding and judgment must be for and in favor of the defendant.

"V.

"The court declares that law to be that if the holders of certificates other than those mentioned and described in the petition, contributed money as provided for in the decree of the United States Circuit Court for the Western Division of the Western District of Missouri in the case of Wagstaff against the Great Western Life Insurance Company *et al.* for the purposes mentioned in said decree, and in reliance upon the force, effect and validity thereof, and that the plaintiff and the then holders of the certificates mentioned in the petition, knew of such payments of money and failed and neglected to protest or object thereto, but said or did nothing, then they are estopped from questioning the force, effect and validity of said decree, and plaintiff cannot recover and the judgment herein must be for and in favor of the defendant."

SEVENTH. Your petitioner prosecuted an appeal from said judgment of the Circuit Court to the Supreme Court of the State of Missouri, said Supreme Court being the highest court of law or equity in the State of Missouri and the highest

court in said State in which a decision of this cause could be had, and the said Supreme Court by its final judgment and decision rendered December 30, 1921, affirmed the action and judgment of the Circuit Court.

EIGHTH. The defense heretofore mentioned, viz., that the final judgment rendered by the United States Circuit Court in cause No. 3367, entitled "J. M. Wagstaff *et al. vs.* Great Western Agency Company and Great Western Life Insurance Company *et al.*," was a bar to said action and that the claims and causes of action sued on therein were fully and finally adjudicated by said United States court, was interposed and urged by petitioner not only by answer and proof, but likewise in its motion for a new trial and was duly presented to the Supreme Court of Missouri and urged by assignment of errors, briefs and argument, and was finally urged in petitioner's motion for rehearing filed in said Supreme Court, and in which motion for rehearing petitioner specifically designated the provisions of the Constitution of the United States which the judgment and decision contravened and violated.

NINTH. Your petitioner respectfully represents that it is advised and believes and alleges the fact to be that under its plea and defense aforesaid it claimed a right, privilege and immunity under the Constitution and laws of the United States and under the authority of the United States Circuit Court exercised under the United States and the Constitution and laws thereof and which was erroneously denied by the Supreme Court of the State of Missouri, and that by its decision and judgment the Supreme Court of the State of Missouri has failed to give full effect, faith and credit to the records and judicial proceedings of said United States Cir-

cuit Court in violation and contravention of section 1 of article IV of the Constitution of the United States, and thereby likewise contravened and violated the acts of the Congress of the United States enacted under the authority of section 2 of article III of the Constitution of the United States relating to the jurisdiction of the courts of the United States in controversies between citizens of different States, and in this connection petitioner respectfully submits that the said Supreme Court, by its said judgment and decision, has, in effect, held invalid, or failed to observe, the said acts of Congress and has ignored and violated the provision of article IV of the Constitution of the United States that the said Constitution and the laws of the United States made in pursuance hereof are the supreme law of the land, for that, petitioner respectfully submits, the acts of Congress aforesaid, enacted in pursuance of section 2 of article III of the Constitution of the United States, are valid laws, binding upon all courts and judges in the State of Missouri, and thereunder the said United States Circuit Court had jurisdiction to hear and determine the said suit of Wagstaff *et al.* against Great Western Life Insurance Company *et al.*, involving the same parties and subject-matter as are involved herein, and its judgment and decree therein was valid, binding and conclusive upon the parties and, as well, upon the courts and judges of the State of Missouri, and is therefore *res judicata* of and a bar to the claims and causes of action sued on herein.

WHEREFORE your petitioner prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of Missouri, commanding said court to certify and send to this court on a

day certain to be therein designated a full and complete transcript of the record and all proceedings of said court in said cause entitled "Adrian F. Sherman, plaintiff and respondent, *vs.* International Life Insurance Company, a corporation, defendant and appellant," being cause number 21220, to the end that said case may be reviewed and determined by this court as provided by law; and your petitioner prays that the judgment of the said Supreme Court of Missouri in said cause may be reversed by this Honorable Court.

And your petitioner will ever pray, etc.

INTERNATIONAL LIFE INSURANCE COMPANY,

By CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys and Counsel for Petitioner.

COOPER, NEEL & WRIGHT,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES

INTERNATIONAL LIFE INSURANCE COMPANY, *Petitioner and Plaintiff in Error,*

vs.

ADRIAN F. SHERMAN, *Respondent and Defendant in Error*

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Because of the confusion in the minds of petitioner's counsel as to whether writ of error or certiorari is the proper proceeding to secure a review of the record and judgment in question, in view of the Act of September 6, 1916, amending section 237 of the Judicial Code, and owing to the importance of this cause to petitioner, the two remedies are, for "greater caution," being simultaneously pursued. Petitioner has heretofore made application to the Chief Justice of the Supreme Court of the State of Missouri, and, after the submission of briefs by both sides, a writ of error has been allowed and the cause, on error, is now pending in this court.

Under the decisions of this court, prior to the amendment of September 6, 1916, writ of error was undisputably the proper remedy. Now, it is the one, or the other, or both. Hence the confusion, *supra*. Hence the dual proceeding. Thereby, however, the records of this court are not materially encumbered nor its labor increased. Similar practice in many cases, recognized, or at least tolerated by this court, is cited in support of the propriety and orderliness of the course here pursued.

The defense of former adjudication, *i. e.*, that the judgment and decree of the United States Circuit Court was a bar to this action, and that the causes of action sued upon were fully and finally determined and adjudicated by the said United States court, was raised and urged by answer, proof, timely declarations of law and motion for new trial in the trial court and was thereafter specifically assigned as error, briefed and argued in the Supreme Court of the State, yet the specific provisions of the Constitution of the United States which the decision and judgment contravened and violated were not designated until petitioner filed its motion for a rehearing in the Supreme Court of the State. This defense directly involved a right, privilege and immunity under the laws and Constitution of the United States under the authority of said United States Circuit Court exercised under the United States and the Constitution and laws thereof, which said right, privilege and immunity was denied petitioner by the Supreme Court of Missouri. Said court failed to give full effect, faith and credit to the records and judicial proceedings of the United States court, and violated and contravened the various sections and provisions of the Constitution of the United States mentioned in the petition for writ of certiorari. The decree rendered by the United States court, affirmatively and positively, discloses that said court had jurisdiction of the parties and subject-matter herein involved. The Supreme Court of the State of Missouri held that the United States court was without jurisdiction, and that its judgment and decree was not binding upon the plaintiff Sherman. This clearly presents a Federal question, which this court will review, and, in so doing, this court will determine for itself, from the record,

whether the Federal court had jurisdiction of the subject-matter and parties, and will not relegate to the State court the power to determine those questions or either of them, as a fact, for otherwise an erring State court could foreclose the jurisdiction of this court by finding the fact to be that the Federal court did not have jurisdiction of the parties, notwithstanding the decision of the Federal court to the contrary.

The following cases, and there are many others to the same effect, show the presence of a reviewable Federal question either (*a*) upon writ of error, *or* (*b*) on certiorari, if, indeed, the case does not "fall on both sides of the line" so that either remedy is proper, to wit:

> Phœnix Fire & Marine Insurance Co. *vs.* Tennessee, 161 U. S., 174:
>
> "It is entirely different from the case of a refusal of a State court to give the proper effect to a judgment of a court of the United States. If a State court erroneously refuses to give such weight and effect to a judgment of one of the courts of the United States a Federal question arises, which is within the jurisdiction of this court to review upon writ of error to the Supreme Court of the State."
>
> Des Moines Navigation & R. R. Co. *vs.* Iowa Homestead Company, 123 U. S., 552:
>
> "The case was taken to the Supreme Court of the State on appeal, and among the errors assigned there was this:
>
> " 'The court erred in holding that plaintiff was not estopped from prosecuting this suit by the

former adjudication in the former suit of the *Iowa Homestead Company* against the *Des Moines Navigation and Railroad Company and others.' * * **

"We cannot look upon the reason given by the court below for not considering the question of prior adjudication as sufficient for avoiding the decision of a controlling Federal question fairly presented by the pleadings, proofs, and assignment of errors, and necessarily involved in the determination of the case. That question stood in the very front of the litigation, and, if decided in favor of the Navigation and Railroad Company, ended the whole matter. To give a judgment the other way, without considering it, was simply to ignore one of the most important elements of the case as it stood in the record. There can be no escape from this conclusion."

Crescent City Live Stock, etc., Co. *vs.* Butchers' Union Slaughter House, etc., Co., 120 U. S., 141:

"This is a writ of error bringing into review a judgment of the Supreme Court of the State of Louisiana, reported in 37 Louisiana Annual Reports, 874. The Federal question arising upon the record presented for our consideration is, whether the Supreme Court of Louisiana in its determination of the case gave due effect to a certain decree of the Circuit Court of the United States for the Eastern District of Louisiana, in a previous litigation between the same parties. * * *

"It must therefore be conceded that the sole question to be determined is, did the Supreme Court of Louisiana, in deciding against the plaintiffs in error, give proper effect to the decree of the Circuit Court of the United States, subsequently reversed by this court?

"It is argued by counsel for the defendant in erro that this does not embrace any Federal question; tha the effect to be given to a judgment or decree of th Circuit Court of the United States sitting in Louisian by the courts of that State is to be determined by th law of Louisiana, or by some principle of genera law as to which the decision of the State court i final, and that the ruling in question did not depriv the plaintiffs in error of 'any privilege or immunit specially set up or claimed under the Constitution o laws of the United States.' But this is an error. Th question whether a State court has given due effec to the judgment of the court of the United States i a question arising under the Constitution and laws o the United States, and comes within the jurisdictio of the Federal courts by proper process. * * * It may be conceded, then, that the judgments and decrees of the Circuit Court of the United States sitting in a particular State, in the courts of that State are to be accorded such effect, and such effect only as would be accorded in similar circumstances to the judgments and decrees of a State tribunal of equal authority. But it is within the jurisdiction of this court to determine, in this case, whether such due effect has been given by the Supreme Court of Louisiana to the decrees of the Circuit Court of the United States here drawn in question."

Tullock *vs.* Mulvane, 184 U. S., 497:

"A reference to some of the decided cases concerning what constitutes a claim of immunity arising from an authority exercised under the United States will serve at once to refute the contention that no Federal question is here presented.

"In Dunasseur *vs.* Rochereau, 21 Wall., 130; 22

L. Ed., 583, the question for decision was whether a State court had given due effect to a decree of a court of the United States, and it was asserted that the contention that it had presented no Federal question. Speaking through Mr. Justice Bradley, the court said (134 L. Ed., p. 590):

"'Where a State court refuses to give effect to the judgment of a court of the United States rendered upon the point in dispute, and with jurisdiction of the case and the parties, a question is undoubtedly raised which, under the act of 1867, may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United States, establishing the circuit court and vesting it with jurisdiction, and hence it would be within the judicial power of the United States, as defined by the Constitution, and it is clearly within the chart of appellate power given to this court, over cases arising in and decided by the State courts."

In this case Mr. Justice White collates a number of authorities on this proposition.

Cumberland Glass Mfg. Co. *vs.* De Witt, 237 U. S., 447:

"Summing up the defenses made in the State court, the Maryland court of appeals said (120 Md., 386): 'The defendant interposed three pleas—first, that it did not commit the wrong alleged; secondly, limitations; thirdly, *res judicata*, based upon certain proceedings had in the United States District Court for Maryland, and particularly set out in the pleas.'

"The Federal question, which is the basis of jurisdiction here, arises upon the plea of *res judicata* to which a demurrer was sustained in the Maryland court of original jurisdiction, which judgment was affirmed by the Court of Appeals. This presents a Federal question because the plea of former judgment in a Federal court adjudicating a right of Federal origin asserts a right which, if denied, made the case reviewable here * * *."

Respectfully submitted,

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys and Counsel for Petitioner.

COOPER, NEEL & WRIGHT,
Of Counsel.

[Endorsed:] File No. 28752. Supreme Court U. S., October Term, 1921. Term No. 797. International Life Ins. Co., petitioner, *vs.* Adrian F. Sherman. Petition for writ of certiorari. Filed March 7, 1922.

APR 28 1922
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No. 707. 295

IN THE

Supreme Court of the United States

INTERNATIONAL LIFE INSURANCE COMPANY, PETITIONER AND PLAINTIFF IN ERROR,

VS.

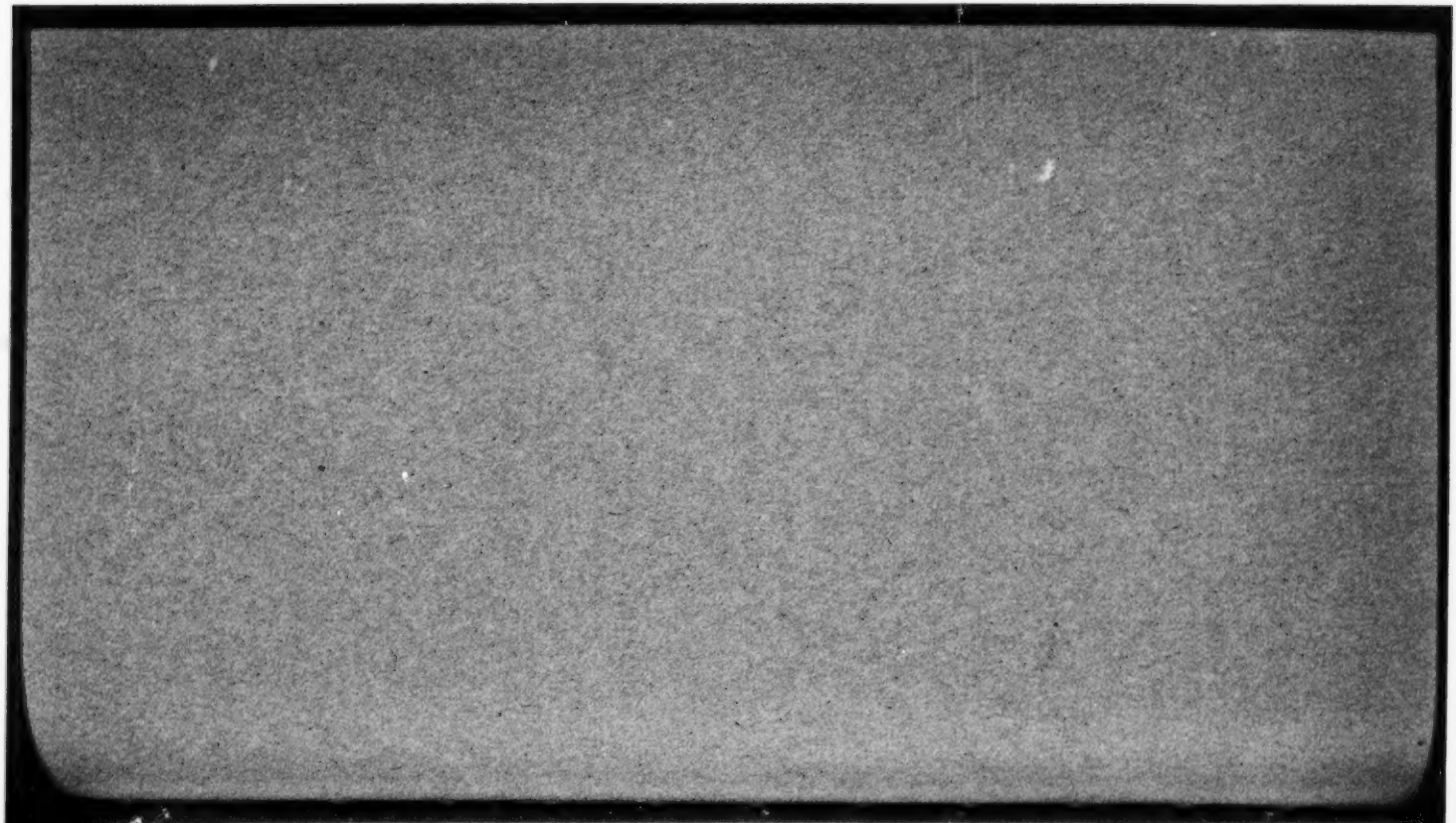
ADRIAN F. SHERMAN, RESPONDENT AND DEFENDANT IN ERROR.

BRIEF IN OPPOSITION TO MOTION TO DISMISS WRIT OF ERROR.

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys and Counsel for Plaintiff in Error.

COOPER, NEEL & WRIGHT,
of Counsel.

(28,752)



No. 797.

IN THE

Supreme Court of the United States

INTERNATIONAL LIFE INSURANCE COMPANY, PETITIONER AND PLAINTIFF IN ERROR,

VS.

ADRIAN F. SHERMAN, RESPONDENT AND DEFENDANT IN ERROR.

BRIEF IN OPPOSITION TO MOTION TO DISMISS WRIT OF ERROR.

I.

We have already pointed out that the proceeding on the petition for a writ of certiorari is docketed under the same number as the case now here on writ of error, and we are advised that, on April 10, 1922, the court made an order passing the petition for a writ of certiorari until such time as the case is regularly reached on the writ of error. This order was right, for, if the case is properly here at all, any ruling upon the pending motion will only determine which remedy is the proper one, and if the court should conclude that certiorari (and not writ

of error) is the proper remedy, then the petition for a writ of certiorari should be granted simultaneously with the dismissal of the writ of error. But the result thus obtained will neither aid the court, nor affect the parties. It is therefore respectfully suggested that the order of April 10, 1922 be allowed to stand and that the pending motion be taken with the case on the merits, so that the whole controversy may be finally determined at the same time. There *is* a doubt as to which is the proper remedy. It may be certiorari. But that uncertainty does exist,—the responsibility of determining which, counsel should not be required to assume at the risk of choosing the wrong remedy, thereby permitting the case to go off on a question of procedure to the consequent dissipation of substantial rights,—is given color by the language used in *Dahnke-Walker Milling Company* v. *Bondurant*, No. 30, decided December 12, 1921, as follows:

> "The case is here on a writ of error and our jurisdiction is challenged. The objection is not that we are without power to review the judgment, but that it can be reviewed only on a writ of certiorari. The controlling statute is Section 237 of the Judicial Code, as amended by the Act of September 6, 1916, c. 448, 39 Stat. 726. Besides confining our power of review in cases litigated in the state courts to those in which the decision of a federal question is involved, this jurisdictional section provides that the review in cases falling within certain classes may be on writ of error and in others on writ of certiorari, the distinguishing or dividing line being drawn according to the nature of the federal question and the way in which the state court decides it. Some cases may fall on both sides of the line, but with this we are not now concerned."

II.

The petition for the writ of error, the petition for the writ of certiorari and the briefs filed in support thereof show that the defense of *res judicata* was raised and urged at all stages of the case. By answer (R. 73) upon which issue was joined by the reply (R. 85). By opening statement of counsel (R. 98). By proof including the decree in the Wagstaff case (R. 152). By sundry declarations of law asked and refused (R. 346). By motion for a new trial (R. 347). By assignment of errors, brief and argument in the Supreme Court of the state, the opinion being principally devoted to a discussion of the point. And finally by motion for a rehearing. In the opinion the court states the issues presented on the appeal as follows (R. 364):

> "The questions raised on this appeal were passed upon by trial court in refusing declarations of law asked by defendant—appellant here. Its principal contentions are: (1) that the assignments of the annuity certificates did not operate as assignments of causes of action for money had and received; (2) that such causes of action, if they ever existed, are barred by the five years' statute of limitations; (3) that plaintiff's claims are *res adjudicata* under the decree of the United States Circuit Court lifting the receivership; and (4) that having acquiesced in the decree during the time of the reorganization of the Insurance Company and for four years thereafter plaintiff's assignors and plaintiff through them are now estopped from asserting that its provisions are not binding upon them."

As to the decree the court said (R. 368):

> "The decree, therefore, in so far as it attempted to cancel their certificates and destroy the rights incident thereto, was a nullity."

Regarding the proceedings before the special master the court said (R. 357):

> "The court also appointed a master in chancery, who in pursuance of the order appointing him, gave notice that all claims and demands held by any person, company or corporation against either of the companies in the hands of the receiver should be presented to him as such master for a hearing on or before October 1, 1908, or the same would be forever barred."

The opinion makes no further mention of this point, but ignores it altogether, although it is, we urge, of such vital importance as to require, without more, a reversal of the judgment of the state court. Defendant in error asserts a money demand, and in his brief (p. 7) says: "These annuity certificates were more in the nature of promissory notes than anything else." When the case comes on upon the merits, we shall assemble the pertinent parts of the record showing that the claims were barred by the decree itself and also, because they were not filed with the master after due and the usual notice.

III.

We have heretofore cited the following cases and copied extracts therefrom:

> *Phoenix Fire & Marine Insurance Co.* v. *Tennessee*, 161 U. S. 174; 40 Law ed., 660.

Des Moines Navigation & R. R. Co. v. *Iowa Homestead Company*, 123 U. S. 552; 31 Law ed. 202.

Crescent City Live Stock, etc. Co. v. *Butchers' Union Slaughter House, etc. Co.*, 120 U. S. 141; 30 Law ed. 614.

Tullock v. *Mulvane*, 184 U. S. 497, 46 Law ed. 657.

Cumberland Glass Mfg. Co. v. *DeWitt*, 237 U. S. 447, 59 L. ed. 1042.

In *Cumberland Glass Mfg. Co.* v. *DeWitt*, *supra*, it is said:

> "Summing up the defenses made in the state court, the Maryland Court of Appeals said (120 Md. 386): 'The defendant interposed three pleas —first, that it did not commit the wrong alleged; secondly limitations; thirdly *res judicata*, based upon certain proceedings had in the United States District Court for Maryland, and particularly set out in the pleas.'
>
> "The Federal question, which is the basis of jurisdiction here, arises upon the plea of *res judicata* to which a demurrer was sustained in the Maryland court of original jurisdiction, which judgment was affirmed by the court of appeals. This presents a Federal question because the plea of former judgment in a Federal court adjudicating a right of Federal origin asserts a right which, if denied, made the case reviewable here under Par. 709, Revised Statutes, Par. 237, Judicial Code (36 Stat. at L. 1156, chap. 231, Comp. Stat. 1913, Par. 1214").

These cases were all decided prior to the amendment of September 6, 1916, to Section 237 of the Judicial Code, and are therefore not conclusive as to the form of the remedy, but they are conclusive upon the proposition

that a federal question is involved and that the same was properly raised and presented to the court of original jurisdiction, as well as to the Supreme Court of the state.

The case of *Smally* v. *Langenous*, 196 U. S. 93 is cited by defendant in error under the caption "Likewise the plea of *res judicata* does not present a federal question." This would be important if true, but the inapplicability of the case is shown by the fact that there was no conflict between the two tribunals in that case, but they were in entire harmony. And so it is with all the cases cited by defendant in error. They either deal with questions not involved in this case or are inapplicable altogether. Undoubtedly the true applicable rule is as stated in *Dupasseur* v. *Rochereau*, 21 Wall. 130; 22 Law Ed. 588, cited and followed in *Tullock* v. *Mulvane* (*supra*), as follows:

> "Where a state court refuses to give effect to the judgment of a court of the United States rendered upon the point in dispute, and with jurisdiction of the case and the parties, a question is undoubtedly raised which, under the Act of 1867, may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United States, establishing the circuit court and vesting it with jurisdiction; and hence it would be within the judicial power of the United States, as defined by the constitution; and it is clearly within the chart of appellate power given to this court, over cases arising in and decided by the state courts."

IV.

On page 11 of this brief of defendant in error, he says:

> "But the state court found *as a fact* that the parties in this case were not parties to the proceeding in the Federal Court, and therefore were not affected by the order of August 27, 1908, made by Judge McPherson."

This point was made by defendant in error in his brief in opposition to the petition for a writ of certiorari to which contention we then and now reply that he overlooks that the question of jurisdiction of the parties is a law question and not a mere question of fact. At the most it is a mixed question of law and fact. The question is whether the Federal Court had jurisdiction under the facts disclosed by its record. That is a question of law. Primarily it was for the Federal Court to determine its jurisdiction preliminary to taking final action in the case. This it did, in favor of its jurisdiction. The State Court, upon a review of the record, held to the contrary, although it *ignored*, in its decision, *the due and orderly proceedings before the special master*. As stated, the decree and judgment of the Federal Court was, at all times, pleaded and urged as a bar. It undoubtedly furnished a complete defense if that court had the right to render the judgment it did render. This court will "for itself" determine the question of the jurisdiction of the Federal Court from the record of that court, and, if this court finds in favor of such jurisdiction, it will follow that the judgment of the State Court must be set

aside. Both judgments cannot stand as determinative of the rights of the parties. The State Court has held that the judgment of the Federal Court is a nullity. If it is, then, plaintiff in error has fought and lost; but if it is not, defendant in error has a judgment which must be set aside. Who will determine which court is right? Counsel on the other side would have the question left to the State Court itself for decision. Such is not the law.

V.

As to the remedy. If the court shall conclude that the writ of error should be dismissed, then it follows that the petition for a writ of certiorari should be, at the same time, granted, and the record now on file treated as a return to the writ. But the better plan is to take this motion along with the case on the merits similarly as has been done with the petition for a writ of certiorari under the order of April 10, 1922.

Respectfully submitted,

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys and Counsel for Plaintiff in Error.

COOPER, NEEL & WRIGHT,
of Counsel.

FILED
MAR 24 1922
WM. R. STANSBU
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 397. 295

INTERNATIONAL LIFE INSURANCE COMPANY, PETITIONER,

VS.

ADRIAN F. SHERMAN. RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI IN THE ABOVE ENTITLED CAUSE.

THAD B. LANDON,
JOHN H. ATWOOD,
OSCAR S. HILL,
WILLIAM THOMSON,
Attorneys for Respondent.

ATWOOD, WICKERSHAM & HILL,
Of counsel.

(28,752.)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 797.

INTERNATIONAL LIFE INSURANCE COMPANY, PETITIONER,

VS.

ADRIAN F. SHERMAN, RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI IN THE ABOVE ENTITLED CAUSE.

We respectfully urge the court to deny this petition for the following reasons:

I.

(a) The federal question sought to be used as a basis for granting of this writ was not raised until petitioner filed a motion for rehearing in the Supreme Court of Missouri.

By the decisions of this court and the state court, this was too late.

Godchaux Co. Plff. In Error v. *Estopia,* 251 U. S. 179, 64 Law Ed. 213.

Anderson, Plff. in Error v. *Durr* (No. 27) decided Nov. 7, 1921.

Merganthaler Linotype Co. v. *Davis,* 251 U. S. 256, 64 L. Ed. 255.

(b) Likewise the law is laid down by the Supreme Court of Missouri that so-called constitutional questions must be raised at the first opportunity consistent with good pleading, and must be urged as every successive step thereafter in order to bring the question properly before the court for review.

LaVelle v. *Met. Life Ins. Co.,* 231 S. W. 616, l. c. 617.

Loymeyer v. *Cordage Co.,* 214 Mo. 689, 113 S. W. 1108.

Moliter v. *R. R.,* 180 Mo. App. 84 l. c. 92.

In *LaVelle* v. *Met. Life Ins. Co., supra,* the Missouri Supreme Court states the law as follows upon this point:

> "In *Loymeyer* v. *Cordage Co.,* 214 Mo. loc. cit. 689, 690, 113 S. W. 1108, 1110, Judge Lamm very clearly and forcefully stated the law, in respect to the matter under consideration, as follows:
>
> > 'But it must be taken as settled law that in so grave a matter as a constitutional question it should be lodged in the case at the earliest moment that good pleading and orderly procedure will admit under the circumstances of the given case; otherwise it will be waived.'

In *George* v. *Railroad*, 249 Mo. loc. cit. 199, 155 S. W. loc. cit. 454, Judge Graves discusses this question from a common sense viewpoint, as follows:

> 'If a law is plainly relied upon by the plaintiff, as here, and defendant desires to challenge that law upon constitutional grounds, it should be done at the earliest practical moment, and in addition a finger should be placed upon the provisions of the Constitution violated. This has been so long and well ruled that the mere mention of the ruling should suffice.' "

By reference to the brief of appellant in the Supreme Court of Missouri it will be noted that nowhere is there any claim of a denial of petitoner's constitutional rights. Under the law of Missouri it was imperatively necessary that such a question be specifically called to the appellate court's attention in appellant's brief. We doubt if the so-called constitutional or federal question was sufficiently raised in the answer filed in the court of *nisi prius*, but certainly it was not presented to the Supreme Court of Missouri by brief. In the late case of *State ex rel Crow* v. *Carothers*, 214 S. W. 857, the law upon this point is expressed in Syllabus 2 as follows:

> 2. Appeal and Error—719 (1), 1078 (1)—Constitutional question not presented in brief waived.
>
> Under Rev. St. 1909, Sec. 2080, and Supreme Court Rule 15 (198 S. W. VI.), constitutional question raised below *held* waived on appeal by appellant's failure to present question in his *brief, points and authorities, or assignment of errors.*"

In complete accord with this doctrine this court in *Hiawassee River P. Co.* v. *Carolina Tennessee P. Co.*, 252 U.

S. 341 l. c. 342, speaking for the court Mr. Justice Brandeis says:

> "If a general statement that the ruling of the state court was against the 14th Amendment were sufficient specification of the claim of a right under the Constitution to give this court jurisdiction (See *Clarke* v. *McDade*, 165 U. S. 168, 172, 41 L. Ed. 673 674, 17 Sup. Ct. Rep. 284; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238, 248, 46 L. Ed. 171, 176, 22 Sup. Ct. Rep. 120; *Marvin* v. *Trout*, 199 U. S. 212, 217, 224, 50 L. Ed. 157, 159, 161, 26 Sup Ct. Rep. 31) still the basis for a review by this court is wholly lacking here. For the 14th Amendment was mentioned only in the trial court. In the Supreme Court of the state no mention was made of it in the assignment of errors; nor was it, so far as appears by the record, otherwise presented to or passed upon by the court. The denial of the claim was specifically set forth in the petition for the writ of error to this court and in the assignment of erors filed here. But obviously that was too late. *Chicago, I & L. R. Co.* v. *McGuire*, 196 U. S. 128, 132, 49 L. Ed. 413, 417, 25 Sup. Ct. Rep. 200. The omission to set it up properly in the Supreme Court of the state was not cured by the allowance of the writ of error by its chief justice. *Appleby* v. *Buffalo*, 221 U. S. 524, 529, 55 L. Ed. 838, 840, 31 Sup. Ct. Rep. 699; *Hurlbert* v. *Chicago*, 202 U. S. 275, 280, 50 L. Ed. 1026, 1028, 26 Sup. Ct. Rep. 617; *Marvin* v. *Trout*, 199 U. S. 212, 223, 50 L. Ed. 157, 161, 26 Sup. Ct. Rep. 31."

In order that there may be no possibility of a claim that the federal question or so-called constitutional question was presented in this case to the Supreme Court of Missouri, we herewith copy "Assignments of Error" and "Points and Authorities" set out in appellant's brief before the Supreme Court of Missouri. We set this out verbatim, except for sake of brevity we leave off the citation of authorities, since

we are merely showing the court that these so-called constitutional questions were not presented to the Supreme Court of Missouri:

"Assignments of Error.

I.

The court erred in not sustaining defendant's demurrer to the evidence.

II.

The court erred in not holding that the decree in the case of Wagstaff against the Great Western Life Insurance Company bound the plaintiff in this case and his assignors, and the court erred in not holding that said decree was a complete defense to defendant in this case.

III.

The court erred in not holding that the plaintiff was estopped from denying that he was bound by the decree in the case of Wagstaff against the Great Western Life Insurance Company.

IV.

The court erred in not holding that the assignors of plaintiff were bound by the decree in the case of Wagstaff against the Great Western Life Insurance Company and that said assignors had no right or cause of action to transfer by assignment.

V.

The court erred in not holding that the alleged cause of action sued on in this case was barred by the statute of limitations.

VI.

The court erred in not holding that there was no proper assignment of the certificate to the plaintiff.

VII.

The court erred in rendering judgment on each of the counts for an improper and undeterminable amount.

VIII.

The court erred in entering judgment on counts 35, 41, 70, 71, 72, 45, 63, 46, 60, 8, 9, 10, 11 and 12.

IX.

The court erred in entering judgment on counts 209, 205, 210, 212, 214.

X.

The court erred in refusing to declare the law as requested by defendant in its declaration of law No. 1.

XI.

The court erred in refusing to declare the law as requested by defendants in its declaration of law No. 2.

XII.

The court erred in refusing to declare the law as requested by defendant in its declaration of law No. 3.

XIII.

The court erred in refusing to declare the law as requested by defendant in its declaration of law No. 4.

XIV.

The court erred in refusing to declare the law as requested by the defendant in its declaration of law No. 5.

XV.

The court erred in not finding for the defendant."

Points and Authorities.

I.

This being a suit for money had and received, same cannot be maintained by the plaintiff, and the court erred in not sustaining defendant's demurrer.

* * * * * * * *

II.

The annuity certificate holders, including plaintiff and his assignors, were in court and bound by the decree in the case of Wagstaff vs. Great Western Life Insurance Company, (a) as a matter of actual representation;

(b) because of community fund; (c) by class representation, and the court erred in not so holding.

* * * * * * * *

III.

The demurrer to the petition and the demurrer to the plaintiff's evidence should have been sustained for the reason that the petition does not state any cause of action and the evidence does not disclose any cause of action against the defendant, and the court erred in not so ruling.

* * * * * * * *

IV.

ESTOPPEL: Plaintiff is estopped to deny that he is bound by the decree of the United States Court in the Wagstaff case, and the court erred in not so holding.

* * * * * * * *

V.

The original annuity certificate holders, the assignors of plaintiff, having had notice of the proceedings in the Federal Court in the Wagstaff case, are bound thereby, and had no right or cause of action to transfer by assignment, and the court erred in not so holding.

* * * * * * * *

Presumptively notices mailed them at their addresses reached them.

* * * * * * * *

VI.

The statute of limitations—the alleged cause of action sued on in this case—is barred by the statute of limitations, and the court erred in not so holding.

* * * * * * * *

VII.

The judgment in favor of the plaintiff cannot stand because no proper assignment of the certificates to plaintiff was shown.

* * * * * * * *

VIII.

In no event was plaintiff entitled to any judgment in this case on Counts 8, 9, 10, 11 and 12, and the court erred in not so holding, and erred in entering judgment on said counts.

IX.

The judgment of the court in this case is erroneous for the further reason that it is for an improper and undeterminable amount on each of the counts.

X.

The court erred in any event in entering judgment on the following counts: 35, 41, 70, 71, 72, 45, 63, 46, 50, 8, 10, and 12, for the reason that the holders of the original certificates thereof consented in writing to the certificates being amended to provide that any payment thereunder should only be out of the earnings of the company.

XI.

The court in any event erred in entering judgment on counts 209, 205, 210, 212, 214, because from the testimony and evidence it appeared that the holders thereof had actual notice of the proceedings in court and the reorganization of the company and were bound by the decree of the court in the Wagstaff case.

XII.

The court erred in refusing to declare the law as requested by the defendant in its declaration of law No. 1 (Ab. Rec. p. 292).

XIII.

The court erred in refusing to declare the law as requested in defendant's declaration of law No. 2 (Ab. Rec. p. 292).

XIV.

The court erred in refusing to declare the law as requested in defendant's declaration by law No. 3 (Ab. Rec. p. 293).

XV.

The court erred in refusing to declare the law as requested by the defendant in its declaration of law No. 4 (Ab. Rec. p. 293).

XVI.

The court erred in refusing to declare the law as requested by the defendant in its declaration of law No. 5 (Ab. Rec. p. 293)."

In our suggestions in opposition to the granting of a motion for a rehearing in this case in the Supreme Court of Missouri we call the court's attention to the fact that none of these questions were properly raised by the appellant before the decision of the Supreme Court, and it is for this reason that the opinion of the Supreme Court does not deal with these so-called questions.

III.

There was no Federal question involved in this case.

We will not attempt a detailed recital of the facts in this case, but refer the court to the excellent statement of facts of the author of the opinion in the Missouri Supreme Court. It is complete and was not challenged by appellant, petitioner here, in their motion for rehearing in the Supreme Court of Missouri.

In 1907, stating that its purpose was to increase its business, the Great Western Life Insurance Company sold to the investing public what it termed annuity certificates. Certificates sold for $150.00 a share, and were issued in large amounts, something like $330,000.00 were issued and sold to the investing public of the southwest. This insurance

company was a "high finance" organization and was organized by a promoter by the name of VanLaningham. Judge McPherson in his picturesque and frank way speaks of Van Laningham and the issuance of these certificates as follows (R. 146):

> "Van Laningham seems to be a man of great push and energy, and full of devices, but if there is anything else that can be said in his favor, it has escaped my attention, and the ordinary vocabulary would be exhausted to accurately present him for consideration. Nor, need I use language denunciatory or otherwise of the schemes hereinbefore briefly set forth. The 'Mississippi Bubble' and other schemes were fairly conservative, as compared with this. These annuity certificates, if carried out, would be a magnificent investment and there was nothing wrong in their purchase."

With the money raised from the investing public on these annuity certificates the company wrote a large volume of business, but on account of the evils of over promotion and high-finance the company was involved in financial difficulties, and in the spring of 1908 certain dissatisfied stockholders and annuity certificate holders (not including the annuity certificate holders represented in this action) filed a suit in the United States District Court at Kansas City alleging mismanagement and other causes for equitable relief, and asked that a receiver be appointed. A receiver was appointed and "the court after receiving the reports of experts on the condition of the company, ordered a sale of the assets of the company. Certain persons interested in the company, believing the assets of the company would be sacrificed at a sale, presented a proposition to the court to pay off certain liabilities and to take the company out of the hands of a receiver and

proceed in the insurance business. The court made an order that if an amount in cash amounting to about $130,000.00 was raised to take care of certain pressing liabilities, he would discharge the receiver and turn the company back to its officers. The amount specified by the court was raised, and the receiver was discharged and the Great Western Life Insurance Company proceeded in the life insurance business until taken over by petitioner, The International Life Insurance Company.

In the order of Judge McPherson turning the company back to its owners and discharging the receiver he directed that unless the annuity certificate holders, who had not assented to the plan referred to above, came in within twenty days from August 27th, 1908, and accepted the plan, they would be forever barred. There was nothing possessing even the semblance of a sale of the assets of this corporation, nor did the court grant any equitable relief prayed for in the suit.

The trial court sitting as a jury held that the holders of the annuity certificates, plaintiffs in this case, respondents here, were not in court and were in nowise a party to these proceedings in the Federal Court. The Supreme Court *in banc* upheld this finding of the trial court.

The question of whether or not the plaintiffs in this case were parties to the case in the Federal Court was a *question of fact*. This court will not review questions of fact settled by the state court. Questions of fact decided by state courts are not open to review here by certiorari or writ of error:

Dower v. *Richards*, 151 U. S. 658.
Egan v. *Hart*, 165 U. S. 188.
Gardner v. *Bonesteel*, 180 U. S. 362.

Bement v. *Harrow Co.*, 186 U. S. 70.
Thayer v. *Spratt*, 189 U. S. 346.
German Savings Society v. *Dormitzer*, 192 U. S. 125.
Adams v. *Church*, 193 U. S. 510.
Clipper Mining Co. v. *Eli Mining Co.*, 194 U. S. l. c. 322.
Chrisman v. *Miller*, 197 U. S. 313.
Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 86.

Before a merger of an insurance company is permitted in Missouri by law, the merger must be approved by three insurance superintendents, one from the State of Missouri, the other two to be chosen from two other states. This commission was composed of Frank Blake, Superintendent of Insurance of Missouri, Ike S. Lewis, Superintendent of Insurance for the State of Kansas, and B. L. Gill, Commissioner of Insurance and Banking of the State of Texas (R. 110). These various annuity certificate holders, respondents here, protested against the merger of the Great Western Life Insurance Company with the International Life Insurance Company, and with reference to the claims of these annuity certificate holders the following stipulation was included by *agreement of parties* in the Articles of Consolidation finally approved by the commissioners (R. 117).

> "In order to preserve all the rights, if any, of the holders of annuity and investment certificates heretofore issued by The Great Western Life Insurance Company and allow them all of the dividends or payments to which they might be entitled under such certificates in the event The Great Western Life Ins. Co. should have continued in the life insurance business for the full term provided in such certificates and to pay any amounts already due thereon, the International Life Insurance Co. for itself

and its successors, *hereby agrees* that as to the said certificates *one suit may be brought in the courts of Missouri for such an amount as would give the Supreme Court jurisdiction thereof on appeal, and the final judgment in such suit shall be binding upon the International Life Insurance Company and its successors for all the certificates of the class or classes adjudicated in said suit, and in the event that the final decision in said suit shall be that the annuity and investment certificates issued by The Great Western Life Insurance Company are valid and subsisting contracts and obligations against that company, then the said International Life Insurance Company agrees that it will pay to the holders or owners of such certificates, the amount paid as the purchase price of such certificates."*

We make the further contention that in *agreeing* to this order as above set forth, the petitioner for this writ *voluntarily waived* any right of proceeding further than the decision of the Supreme Court of Missouri. The suit filed was such as contemplated when this order was made. A decision was rendered by the Supreme Court *in banc* holding plaintiff entitled to recover, and we feel we are within the proprieties in saying that an end should be had to the delay and plaintiffs should be entitled to the rewards of their victory. There can be nothing more plain than that these annuity certificate holders were in no manner whatsoever parties to the receivership case in the Federal court, and their rights therefore were unaffected by any order of Judge McPherson made in that case. It was strongly urged by our opponents that these annuity certificate holders if not present in court and not parties to this proceeding and represented in it, they were present by what they term "class" or "virtual representation."

It was shown in evidence that great publicity was given to this hearing and by the files of newspapers introduced in support of this contention. It was also shown that notices were mailed out to the various annuity certificate holders scattered as they were over the entire southwest. But we undertake to say that no court will ever hold that a man will be denied his sacred right of a day in court by any claim of "class" or "virtual representation" when such a proceeding attempts to cancel the solemn rights of a contract, and moreover further attempts to compel the assumption of new and different contractural relations. Mr. Orr, a very able lawyer, an attorney for the re-organization committee so-called in the receivership case referring to these certificate holders said (Rec. 276):

> "They were all informed—NOT BY SUMMONS OR SUBPOENA, but they were informed as to what was going on etc."

Mr. Orr was a witness for the defense in this case and hostile to plaintiff's claim, but he himself makes admission that these annuity certificate holders who are opposing the granting of this petition were not in court BY SUMMONS OR SUBPOENA. No court has ever more jealously defended the principle of every man having his day in court than has this great court and there are many decisions where this doctrine is laid down. In the case of *Hovey* v. *Elliott*, 167 U. S. 407, 42 L. Ed. 215:

> "The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action and to render decrees without any hearing what-

ever, is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence, to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

To the same effect is the case of *McVeigh* v. *United States*, 78 U. S. 11 Wall. 259 l. c. 267; *Windsor* v. *McVeigh*, 93 U. S. 277, l. c. 278; *Galpin* v. *Page*, 85 U. S. 18 Wall. 350, l. c. 368.

For all of the reasons heretofore mentioned, we respectfully urge the court to deny this petition.

Respectfully submitted,

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OSCAR S. HILL,
WILLIAM THOMSON,
Attorneys and Counsel for Respondent.

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Of Counsel.

Office Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 797. 295

INTERNATIONAL LIFE INSURANCE COMPANY,
PETITIONER AND PLAINTIFF IN ERROR,

vs.

ADRIAN F. SHERMAN, RESPONDENT AND DEFENDANT IN ERROR.

REPLY BRIEF OF PETITIONER ON PETITION FOR WRIT OF CERTIORARI.

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys for Petitioner.

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REPLY BRIEF OF PETITIONER ON PETITION FOR WRIT OF CERTIORARI.

The proceeding on petition for a writ of certiorari is docketed under the same number as the case now here on writ of error, and it is respectfully suggested that the controversy, both as to remedy and on the merits, be submitted at one time, on complete briefs and oral argument, so that the court, with full information, may determine which is the proper remedy. The desirability and propriety of this course is shown by one of the points made by respondent, viz:

(1) That the State Court found, as a fact, that the Federal Court did not have jurisdiction of respondent's assignors (though it concededly did of him) and that this court will not review a finding on the facts. He overlooks that the question of jurisdiction of the parties is a law question and not a mere question of fact. At the most it is a mixed question of law and fact. The question is whether the Federal Court had jurisdiction under the facts disclosed by its record. That is a question of law. Primarily it was for the Federal Court to determine its jurisdiction preliminary to taking final action in the case. This it did, in favor of its jurisdiction. The State Court, upon a review of the record, held to the contrary, although it ignored, in its decision, the due and orderly proceedings before the special master. As stated, the decree and judgment of the Federal Court was, at all times, pleaded and urged as a bar. It undoubtedly furnishes a complete defense if that court had the right to render the judgment it did render. This court will *"for itself"* determine the question of the jurisdiction of the Federal Court from the record of that court, and, if this court finds in favor of such jurisdiction, it will follow that the judgment of the State Court must be set aside. Clearly a right or immunity is claimed by petitioners, which should be examined and considered by this court after full and careful presentation at the hearing on the merits.

(2) Respondent submits an extract from the merger contract between the Great Western Life Insurance Company and petitioner. He omitted to quote the following part of the contract (R., 131):

> "or, if said International Life Insurance Company shall prefer, it may elect to continue said annuity and investment certificates in full form and effect, according to the terms thereof, except that the same shall apply, * * *."

Here follows substantial modifications of the terms of the certificates, and then,

> "Nothing herein shall be construed as a waiver of any defense which either The Great Western Life Insurance Company or the International Life Insurance Company may have against the validity of or liability upon said certificates, nor shall it be construed to take away any right or remedy of any holder of any such certificate against the International Life Insurance Company."

This action is not on the contract nor in accordance therewith. It is in assumpsit for money had and received to recover the price paid for the certificates, after rescission. The validity of the certificates is not involved nor material. The action could as well be maintained if it were asserted and held that the certificates were *ultra vires* as not being "annuities" and involving no element of the expectancy or duration of life. The judgment is a general money judgment, enforceable by general execution and capable of being satisfied only by the payment of money. None of the alternatives offered by the contract are available to petitioner. The contract has no place in this controversy, except, of course, to put petitioner in the shoes of the Great Western Life Insurance Company. Hence there is nothing in the opinion of the Supreme Court of Missouri touching on this

point. A case, no doubt, could have been brought on involving this contract; but none such has been instituted.

(3) The issue is: Shall the decision of the Federal Court stand? If so, respondent has no case. If not, petitioner must pay the judgment.

Respectfully submitted,

CHARLES G. REVELLE,
ARMWELL L. COOPER,
Attorneys for Petitioner.

INTERNATIONAL LIFE INSURANCE COMPANY *v.* SHERMAN.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

No. 295. Argued March 15, 1923.—Decided May 21, 1923.

Stockholders of a corporation equitably owning the stock of an insurance company brought suit against the two companies, and their managers, in the District Court, for the purpose of protecting the assets of the insurance company through a receiver, against mismanagement; other like stockholders, and holders of annuity certificates issued by the insurance company, intervening, proposed a plan, for reorganizing that company, which provided, *inter alia*, that holders of such annuity certificates should pay a stated amount on each certificate, surrender their certificates for cancelation and receive stock of the insurance company in exchange, and that all who failed to avail themselves of this privilege within 20 days, should be barred and estopped from any claim against the company and their certificates be deemed canceled, etc. *Held*, that, as to certificate holders who were not parties, and did not appear in the suit, and against whom no relief was prayed, the attempt to bar their rights and cancel their certificates was plainly void; and that the contention that a judgment of a state court, in so holding, failed to give full faith and credit to the District Court's decree, as required by the Constitution and acts of Congress, was frivolous. P. 351.

Writ of error to review 291 Mo. 139, dismissed; certiorari denied.

ERROR to a judgment of the Supreme Court of Missouri affirming a judgment against the Insurance Company on annuity certificates issued by its predecessor.

Mr. Charles G. Revelle, with whom *Mr. Armwell L. Cooper* was on the brief, for plaintiff in error.

Mr. Oscar S. Hill, with whom *Mr. Thad B. Landon*, *Mr. John H. Atwood* and *Mr. William Thomson* were on the brief, for defendant in error.

MR. JUSTICE BUTLER delivered the opinion of the Court.

This is an action brought by the defendant in error in the Circuit Court of Jackson County, Missouri, for money paid by his assignors for annuity certificates issued by the Great Western Life Insurance Company, the predecessor of plaintiff in error. Judgment for $47,463.90, with interest and costs, was affirmed in the State Supreme Court. That court allowed writ of error bringing the case here. A petition for writ of certiorari also has been presented. The federal question asserted is that the state court, in violation of the Constitution and acts of Congress defining the jurisdiction of federal courts, failed to give full faith and credit to certain provisions of a decree of the United States Circuit (now District) Court for the Western District of Missouri, set up in the answer, purporting to cancel and annul the annuity certificates. The defendant in error moves to dismiss the writ of error and opposes the granting of certiorari on the grounds, among others, that the United States court was without jurisdiction to decree the cancellation of the certificates assigned to defendant in error, and that the provisions of the decree relied on by plaintiff in error are void.

We are of opinion that the asserted federal right is so obviously devoid of merit and frivolous that the writ of error must be dismissed and certiorari denied.[1]

In 1906 the Great Western Agency Company was incorporated under the laws of Colorado. In 1907 those

[1] *Missouri Pacific R. R. Co.* v. *Clarendon Boat Oar Co.*, 257 U. S. 533; *Piedmont Power & Light Co.* v. *Graham*, 253 U. S. 193; *Toop* v. *Ulysses Land Co.*, 237 U. S. 580, 583; *Fay* v. *Crozer*, 217 U. S. 455; *Goodrich* v. *Ferris*, 214 U. S. 71, 79; *Farrell* v. *O'Brien*, 199 U. S. 89, 100. See also decisions per curiam: *Nesmith* v. *Ohio*, 257 U. S. 622; *Pueblo of Laguna* v. *Candelaria*, *id.* 623; *Harvey* v. *Union Traction Co.*, *id.* 624; *Winehill & Rosenthal* v. *Louisiana*, 258 U. S. 605; *Hartford Life Insurance Co.* v. *Johnson*, *id.* 612; *Lindsey* v. *Allen*, *id.* 613.

in control of that company caused the Great Western Life Insurance Company to be organized under the laws of Missouri, having a capital of $100,000—1000 shares. Eight shares were held in the names of the incorporators, and the remaining 992 were held by them as trustees for the agency company. Desiring to raise more funds, the company issued so-called annuity certificates which were sold at $150 per "share." Each share obligated the company to pay an annuity to be arrived at by dividing 500 into a sum based on 25 cents on each $1000 of insurance—with certain exceptions not necessary here to be set forth—written by the company during fifty years from its incorporation. In May, 1908, certain stockholders of the agency company filed a bill in the United States court against that company, the insurance company and individuals controlling them, alleging mismanagement and improper use of the insurance company's property in fraud of their rights. It prayed that a receiver be appointed to take charge of and administer the assets of both companies for the benefit of those entitled thereto. A receiver was appointed and directed to sell the property of the insurance company. When the application of the receiver for confirmation of his acceptance of an offer came before the court, certain stockholders of the agency company and certificate holders appeared and asked a postponement. It was shown that some of the stockholders and certificate holders had undertaken to raise funds for the rehabilitation of the insurance company; that some money for this purpose had been contributed; and that there was assurance that enough would be raised to pay off the debts. Postponement was granted by an order which stated:

"F. M. Pearl and other stockholders of the Great Western Agency Company and annuity certificate holders of the Great Western Life Insurance Company who are similarly situated, appearing by B. P. Waggoner and James W. Orr, . . . etc."

The matter again came before the court, and its order recited:

"Now on this 27th day of August, 1908 . . . came on further to be heard the objections and exceptions of F. M. Pearl and other stockholders of the Great Western Agency Company and Annuity Certificate holders of the Great Western Life Insurance Company to the confirmation of the sale of the assets . . . A. F. Sherman appearing for himself and certain other annuity certificate holders . . . and all parties being before the court and being heard and the court being fully informed and advised, it is considered, ordered, and decreed:"

The decree approved the reorganization plan presented and directed the return of all property to the company, immediate payment of approved death claims, and the giving of a bond to indemnify the receiver from such claims as might be presented and approved. The plan of rehabilitation was that annuity certificate holders should pay $37.50 on each certificate, surrender the same for cancellation and then receive stock of the insurance company of par value equal to one-half of the payment, and gave those who had not availed themselves of this privilege 20 days within which to do so, and declared those failing to make such payment and surrender their annuity certificates for cancellation, "barred and estopped from making any claim of any kind whatsoever against said Life Insurance Company or officers or stockholders thereof, or against any assets of said company, and such annuity certificates will then and thereby be fully canceled in law and in equity, and such annuity certificate holders will have no further rights, claims or demands against said company, its officers, stockholders, assets or property on account thereof."

The decree directed the sale by the receiver of the agency company of the 992 shares of stock of the insurance company to a trustee for those so contributing to

the rehabilitation of the insurance company; it fixed compensation of the receiver and his solicitors and provided for the payment thereof; it stated that the insurance company had deposited funds for carrying out the provisions of the decree and directed the same to be so used; bids submitted for the assets were rejected, and the decree continued: " . . . that the jurisdiction of this court is fully retained, extended and continued from time to time until this cause is finally concluded, over all subjects-matter covered by any pleading now on file or that later on may be filed, and over all parties whose names are now on the record and such other party or parties as may later on be brought into court, or who may come into court by any pleading. And all such parties now to the record, including the said, the Great Western Life Insurance Company, and all parties who may later on be made parties herein, shall be bound by such further orders and decrees as to the court may seem necessary and proper."

No further proceedings were had, and on November 29, 1912, an order was filed relinquishing jurisdiction and discontinuing the case.

The insurance company resumed business and continued until its merger with the plaintiff in error, December 7, 1912. By the articles of consolidation, the latter agreed to pay all debts, liabilities and obligations of the former. The claims of the certificate holders were specifically referred to, and the plaintiff in error agreed to pay the annuities provided for in such certificates or refund the amounts paid for them if they should be held by the Supreme Court of Missouri to be valid obligations of the Great Western Company at the time of the merger. The state court found that the certificate holders who assigned to defendant in error were not original parties to the suit; that they did not subsequently intervene or appear in person or by counsel; that no relief was sought

against them by any party to the suit, and that the only relief sought by stockholders and annuity certificate holders, who proposed and supported the plan of rehabilitation, was to have the property returned to the insurance company upon payment of its debts. These findings are sustained by the evidence. The stockholders and certificate holders who did appear in that suit for the purpose of reorganizing the company had no authority or power to represent certificate holders who did not appear. There is nothing in the record to support the jurisdiction of the court to deal with or cancel the annuity certificates assigned to defendant in error. The assignors were denied a hearing upon the matters decreed against them.

The provisions of the decree, attempting to bar and estop certificate holders from making any claim against the insurance company, its officers, stockholders or assets, and attempting to cancel their certificates and determine that they had no further rights, claims or demands unless within the specified 20 days, they should pay in $37.50 per share, and, upon surrender of their certificates, take stock in the insurance company of par value of one-half the amount so paid, were without jurisdiction. The company could not thus be relieved of its obligations to non-consenting annuity certificate holders and have its property returned to it exempt from their claims. Their rights could not be so disposed of. As to them the decree was not a judicial determination, and the courts of Missouri were right in holding it to be a nullity. See *Hovey* v. *Elliott*, 167 U. S. 409; *Windsor* v. *McVeigh*, 93 U. S. 274, 277; *McVeigh* v. *United States*, 11 Wall 259.[1]

Writ of error dismissed.
Writ of certiorari denied.

[1] Cf. *Reynolds* v. *Stockton*, 140 U. S. 254, 264; Rev. Stats., § 737; Equity Rules 47 and 48, in force in 1908.